(28,581)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1921.

No. 626.

DES MOINES NATIONAL BANK, PLAINTIFF IN ERROR,

vs.

THOMAS FAIRWEATHER, MAYOR; JOHN BUDD, E. A. ELLIOTT, ET AL., COUNCILMEN OF THE CITY OF DES MOINES, &c., ET AL.

IN ERROR TO THE SUPREME COURT OF THE STATE OF IOWA.

INDEX.

JUDD & DETWEILER (INC.), PRINTERS, WASHINGTON, D. C., DECEMBER 19, 1921.

1 In the Supreme Court of the United States.

No. —.

DES MOINES NATIONAL BANK, Plaintiff in Error,

vs.

THOMAS FAIRWEATHER, Mayor; JOHN BUDD, E. A. ELLIOTT, HARRY B. Frase, and Ben Woolgar, Councilmen of the City of Des Moines, Constituting the Local Board of Review of said City, and The City of Des Moines, Iowa, Defendants in Error.

Writ of Error.

UNITED STATES OF AMERICA, *ss:*

The President of the United States to the Honorable the Judges of the Supreme Court of the State of Iowa, Greeting:

Because, in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said Supreme Court of the State of Iowa, before you, or some of you, being the highest Court of law or equity of the said State in which a decision could be had in the said suit, between the Des Moines National Bank, a corporation; plaintiff in error, (plaintiff and appellee in said suit in said court), and Thomas Fairweather, Mayor, John Budd, E. A. Elliott, Harry B. Frase and Ben Woolgar, Councilmen of the City of Des Moines, constituting the Local Board of Review of said City, and the City of Des Moines, Iowa, defendants in error, (defendants and appellants in said suit in said court), wherein was drawn in question a right asserted under and by virtue of the Constitution and statutes of the United States of America, and the said judgment and decision is against such right as asserted, and wherein was drawn in question the validity of statutes of, or an authority exercised under said State of Iowa on the ground that as administered they are repugnant to the constitution, treaties or laws of the United States, and the decision was in favor of their validity,

Whereby, a manifest error has happened, to the great dam-
2 age of the said Des Moines National Bank, a corporation, plaintiff in error, as by its complaint appears.

We being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then under your seal distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you may have the same at Washington on the 22nd day of December 1921, next, in the said Supreme Court, that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein, to correct that error, what of right and

according to the laws and customs of the United States should be done.

Witness the Honorable William Howard Taft, Chief Justice of the Supreme Court of the United States, the 22d day of November, in the year of our Lord, one thousand nine hundred and twenty-one.

[Seal of U. S. District Court, Southern District of Iowa.]

W. C. McARTHUR,
Clerk of the District Court of the United States for the Southern District of the State of Iowa.

2½ [Endorsed:] Filed Nov. 22, 1921. B. W. Garrett, Clerk Supreme Court.

3 UNITED STATES OF AMERICA, *ss:*

The President of the United States to Thomas Fairweather, Mayor; John Budd, E. A. Elliott, Harry B. Frase, and Ben Woolgar, Councilmen of the City of Des Moines, constituting the local Board of Review of said City, and The City of Des Moines, Iowa, Greeting:

You are hereby cited and admonished to be and appear at and before the Supreme Court of the United States, at Washington, D. C., within thirty (30) days from the date hereof, pursuant to a Writ of Error filed in the office of the Clerk of the Supreme Court of the State of Iowa, wherein the Des Moines National Bank, a corporation, is plaintiff in error, and you are defendants in error, to show cause, if any there be, why the judgment rendered against the plaintiff in error, as in said writ of error mentioned, should not be corrected, and why speedy justice should not be done to parties in that behalf.

Witness, Chief Justice of the Supreme Court of the State of Iowa, this 22 day of November, A. D. 1921.

W. D. EVANS,
Chief Justice of the Supreme Court of Iowa.

Attest:

[Seal of the Supreme Court of Iowa.]

B. W. GARRETT,
Clerk of the Supreme Court of the State of Iowa.

November 22nd, 1921.

STATE OF IOWA
Polk County, ss:

We, the undersigned Attorneys of Record for the defend-
4 ants in error in the above entitled cause, hereby acknowledge due service of the above citation, and enter an appearance for said defendants in error, in the Supreme Court of the United States.

WM. E. MILLER,
HENRY H. GRIFFITH,
C. A. WEAVER,
H. W. BYERS,
Attorneys for Thomas Fairweather, Mayor; John Budd, E. A. Elliott, Harry B. Frase, and Ben Woolgar, Councilmen of the City of Des Moines, Constituting the Local Board of Review of said City, and The City of Des Moines, Iowa, Defendants in Error.

4½ [Endorsed:] Filed Nov. 22, 1921. B. W. Garrett, Clerk Supreme Court.

5 In the Supreme Court of the United States.

No. 33525.

DES MOINES NATIONAL BANK, Plaintiff in Error,

vs.

THOMAS FAIRWEATHER, Mayor; JOHN BUDD, E. A. ELLIOTT, HARRY B. Frase, and Ben Woolgar, Councilmen of the City of Des Moines, Constituting the Local Board of Review of said City, and The City of Des Moines, Iowa, Defendants in Error.

Assignment of Errors.

Comes now the plaintiff in error, in the above entitled cause, and avers and show that in the record and proceedings in said cause, the Supreme Court of the State of Iowa, erred to the grievous injury and wrong of the plaintiff in error herein, and to the prejudice and against the substantial rights of the plaintiff in error, in the following particulars, to-wit:

1. The Supreme Court of the State of Iowa erred in rendering its judgment and decree in said cause on to-wit, November 17, 1921.

2. The Supreme Court of the State of Iowa erred in rendering its decision of February 12, 1921, reversing the judgment of the District Court of Polk County, Iowa, rendered in said cause.

3. The Supreme Court of the State of Iowa erred in denying the petition for rehearing filed in said cause by plaintiff in error, and

in rendering its decision on September 28, 1921, adhering to its former ruling reversing the judgment of the District Court of Polk County, Iowa, rendered in said cause.

6 4. The Supreme Court of the State of Iowa erred in holding that the petition of the plaintiff in error did not state facts sufficient to constitute a cause of action against the defendants in error.

5. The Supreme Court of the State of Iowa erred in reversing the judgment of the District Court in and for Polk County, Iowa, which overruled the demurrer of the defendants in error addressed to the petition of the plaintiff in error filed in said cause.

6. The Supreme Court of the State of Iowa erred in holding that in and by the assessment involved in said case securities of the United States of America, and securities issued under the provisions of the act of the Congress of the United States approved April 24, 1917, commonly called the "First Liberty Bond Act", and the act of the Congress of the United States approved September 24, 1917, commonly called the "Second Liberty Bond Act", and the act of the Congress of the United States approved December 23, 1913, commonly called the "Federal Reserve Act", were not subjected to assessment and taxation by the State of Iowa and its local authorities.

7. The Supreme Court of the State of Iowa erred in holding that the said assessment involved in said case did not subject to taxation shares of stock in a national banking corporation, organized and existing pursuant to the acts of the Congress of the United States, at a greater rate than is imposed against moneyed capital in the hands of individual citizens of the State of Iowa.

8. The Supreme Court of the State of Iowa erred in holding that the said assessment involved in said case was not
7 contrary to and in violation of the provisions of section 5219 of the Revised Statutes of the United States, which is a revision of the acts of the Congress of the United States of June 3, 1864, (13 St. at Large, 111), and February 10, 1868, (15 St. at large 34).

9. The Supreme Court of the State of Iowa erred in holding that the said assessment involved in said case did not subject to taxation by the State of Iowa and local taxing authorities of said State, securities issued pursuant to the act of the Congress of the United States of December 23, 1913, commonly called the "Federal Reserve Act".

10. The Supreme Court of the State of Iowa erred in holding that in truth and in fact by the method pursued as disclosed by the record, the assessment involved was not of the tangible assets of the plaintiff in error, including securities of the United States Government, or securities issued under authority of the United States Government.

11. The Supreme Court of the State of Iowa erred in holding that the statutes of the State of Iowa, being sections 1321 and 1322 of

the Code of 1897, as amended, as administered and as disclosed by the record in this case, were not repugnant to the constitution, treaties and laws of the United States.

Wherefore, for these and other manifest errors appearing in the record, the said Des Moines National Bank, plaintiff in error, prays that the judgment of the said Supreme Court of the State of Iowa be reversed, set aside and held for naught, and that judgment
8 be rendered for plaintiff in error, granting it its right under the statutes and laws of the United States, and plaintiff also prays judgment for its costs.

F. W. SARGENT,
J. G. GAMBLE,
Attorneys for Des Moines National Bank,
Plaintiff in Error.

8½ [Endorsed:] Filed Nov. 22, 1921. B. W. Garrett, Clerk Supreme Court.

9 Filed Mch. 24, 1920. B. W. Garrett, Clerk Supreme Court.

In the Supreme Court of Iowa, May Term, 1920.

In Equity.

DES MOINES NATIONAL BANK, Plaintiff and Appellee,

vs.

THOMAS FAIRWEATHER, Mayor; JOHN BUDD, E. A. ELLIOTT, HARRY B. FRASE, and Ben Woolgar, Councilmen of the City of Des Moines, Constituting the Local Board of Review of said City, and The City of Des Moines, Iowa, Defendants and Appellants.

Appeal from Polk County District Court.

Honorable Thomas J. Guthrie, Judge.

H. W. Byers, Reson S. Jones, C. A. Weaver, Paul Hewitt, Attorneys for Appellants.
Sargent & Gamble, Attorneys for Appellee.

APPELLANTS' ABSTRACT OF RECORD.

Service of the within abstract is hereby accepted and receipt of copies acknowledged this 20 day of March, 1920.

SARGENT & GAMBLE,
Attorneys for Appellee.

10 On the 16th day of May, 1919, the Des Moines National Bank caused to be served upon Honorable Thomas Fairweather, Mayor and presiding officer of the City Council of the City of Des Moines, sitting as a Board of Review, its

Notice of Appeal,

from the action of the City Council of the City of Des Moines as a Board of Review of said city in overruling the complaint of said Des Moines National Bank as to the action of the Assessor of said City in assessing the property of said Des Moines National Bank as of January 1, 1919.

On May 16, 1919, the said Des Moines National Bank filed with the Clerk of the District Court in and for Polk County such notice of appeal with the return of service thereon, all in due form as required by law, and on the 16th day of May, 1919, filed its

Petition in Equity,

in words and figures as follows:

Par. 1. That it is a corporation organized and existing under and by virtue of the laws of the Congress of the United States, and as such is engaged in the business of banking in the City of Des Moines, Polk County, Iowa.

Par. 2. That the said Thomas Fairweather is the duly elected, qualified and acting Mayor of the City of Des Moines, Polk County, Iowa, and the said John Budd, E. A. Elliott, Harry B. Frase and Ben Woolgar, are the duly elected, qualified and acting members of the City Council of the City of Des Moines, Polk County,
11 Iowa; that said Mayor and City Council constitute the local Board of Review for the City of Des Moines, Polk County, Iowa, pursuant to the terms of Section 1370 of the Supplement to the Code of Iowa; that the City of Des Moines is a municipal corporation, existing pursuant to the laws of the State of Iowa.

Par. 3. That on, to wit, January 1, 1919, said Des Moines National Bank, plaintiff herein, owned and held as an investment securities of the United States Government, issued pursuant to the acts of Congress of April 24, 1917, and September 24, 1917, as amended, of the following kinds and classes, to wit:

Liberty Bonds of the face value of	$487,800.00
Certificates of indebtedness of the United States Treasury	924,000.00
War Savings Stamps of the value of	3,686.00
Said Bank also on January 1, 1919, owned and held as an investment stock in the Federal Reserve Bank, created and organized under and by virtue of the Act of Congress of December 23, 1913, of the face value of	27,000.00
Making the total of such securities so held as an investment	$1,442,486.00

Par. 4. That on said January 1, 1919, pursuant to the terms of Section 1322 of the Supplement to the Code of Iowa, said plaintiff

made a statement to the assessor of the City of Des Moines, and by said statement the capital stock of said corporation was shown to be $750,000.00; the amount of the surplus of said corporation was shown to be $150,000.00; and the amount of the undivided earnings of said corporation was shown to be $5,849.02. That said plaintiff avers that under and by virtue of a certain contract
12 existing between said plaintiff and the stockholders of the German Savings Bank, said plaintiff had agreed to pay to said stockholders of said German Savings Bank or to other persons, in accordance with the provisions of said contract, the sum of $50,000.00 and interest thereon at six per cent per annum from January 1st, 1915, and that said sum of $50,000.00 and interest thereon as aforesaid, aggregating $12,000.00 constitutes under the terms of said contract an obligation of said corporation, and should for the purpose of this proceeding be deducted from the total amount of capital, surplus and undivided earnings, leaving as the net capital, surplus and undivided earnings of said corporation $843,849.02.

Par. 5. That included in the assets of said bank, from which said capital, surplus and undivided earnings are computed, are said securities of the United States Government so aggregating $1,442,486.00.

Par. 6. That on said January 1, 1919, said plaintiff owned and held as an investment real estate of the total assessed value of $156,050.00; that said Assessor has assessed the total value of the shares of stock of said corporation at $748,799.00, or at an amount substantially and practically identical with the total capital, surplus and undivided earnings of said corporation, including the value of said securities issued by the United States Government, and including the amount of the obligation of said plaintiff on account of the said German Savings Bank contract, less the value of the real estate owned and held by said corporation as an investment.

Par. 7. Said plaintiff further shows to the court that on, to wit, November 1, 1918, it actually owned securities issued by the United States Government since the declaration of war against Germany as follows:

13 Liberty Bonds issued pursuant to the acts of Congress of April 24, 1917, and September 24, 1917, as amended, in the total sum of $213,550.00; War Savings Stamps of the value of $1,856.80; Certificates of indebtedness of the United States of the value of $1,213,000.00; that the minimum amount of such securities so actually owned in good faith and not for the sole purpose of securing a deduction thereof from the assessment of the shares of stock of said plaintiff during the said period of sixty days prior to December 31, 1918, was $951,274.96.

Par. 8. That on to wit, April —, 1919, and within the time allowed by law and required by the statutes of the State of Iowa, plaintiff made written complaint of the said assessment to the Board of Review for the City of Des Moines, Polk County, Iowa, a copy

of said written complaint being hereto attached, identified as Exhibit "A" and by this reference made a part hereof as fully and completely as if herein in full set forth. Thereafter and on to wit, April —, 1919, and within the time allowed by law and required by the statutes of the State of Iowa, said plaintiff filed before said Local Board of Review for the City of Des Moines, Polk County, Iowa, an amendment to its said complaint, a copy of which is hereto attached, identified as Exhibit "B" and by this reference made a part hereof.

Par. 9. That on, to wit, April 30, 1919, the said complaint and amendment of said plaintiff came on for hearing before the said Board of Review for the City of Des Moines, Polk County, Iowa. Whereupon said Board of Review by the unanimous vote of its members adopted the following resolution:

14 "Be it Resolved by the City Council of the City of Des Moines, sitting as a Board of Review.

That the Assessor correct his return on the assessment against the stock of the Des Moines National Bank, so that the assessment against the shares of said bank shall be based upon the following showing:

Capital stock	$750,000.00
Surplus	150,000.00
Undivided Earnings	5,849.02
Total	$905,849.00
Less:	
Real Estate	$156,050.00
Obligations to German Savings Bank	62,000.00
Total	$218,050.00

Leaving total assets of the bank upon which to base the assessment of its shares of stock $687,799.02.

Be it further Resolved:

That the Assessor be and he is hereby directed to enter on his books, and the assessment against the German Savings Bank and its shares of stock, an assessment in the sum of $25,000.00, and protest of the Des Moines National Bank in all other respects be overruled."

Par. 10. That is is provided in and by the terms of Section 1322 of the Supplement to the Code of Iowa, herein set forth for the convenience of the court, as follows:

"Shares of stock of national banks and state and savings banks, and loan and trust companies, located in this state, shall be assessed to the individual stockholders of the place where the bank or loan and trust company is located. At the time the assessment is made the officers of national banks and state and savings banks and loan and trust companies shall furnish the assessor with lists of all the

stockholders and the number of shares owned by each, and the assessor shall list to each stockholder under the head of corporation stock the total value of such shares. To aid the assessor in fixing the value of such shares, the said corporation shall furnish him a verified statement of all the matter provided in section thirteen hundred twenty-one of the supplement to the code, 1907, which shall also show separately the amount of the capital stock and the surplus and undivided earnings, and the assessor from such statement shall fix the value of such stock based upon the capital, surplus and undivided earnings. In arriving at the total value of the shares of stock of such corporations, the amount of their capital actually invested in real estate owned by them and in the shares of stock of corporations owning only the real estate (inclusive of leasehold interests, if any), on or in which the bank or trust company is located, shall be deducted from the real value of such shares, and such real estate shall be assessed as other real estate, and the property of such corporation shall not be otherwise assessed. A refusal to furnish the assessor with the list of stockholders and the information required under this section shall be deemed a misdemeanor and any bank or officer thereof so refusing shall be punished by a fine not exceeding five hundred dollars."

That it is provided in and by the terms of Section 1321 of the Supplement to the Code of Iowa, herein set forth for the convenience of the court, as follows:

"Private banks or bankers, or any persons other than corporations hereinafter specified, a part of whose business is the receiving of deposits subject to check, on certificates, receipts, or otherwise, or the selling of exchange, shall prepare and furnish to the assessor a sworn statement, showing the assets, aside from real estate, and liabilities of such bank or banker on January first of the current year, as follows:

1. The amount of moneys, specifying separately the amount of moneys on hand or in transit, the funds in the hands of other banks, bankers, brokers or other persons or corporations, and the amount of checks or other cash items not included in either of the preceding items:

2. The actual value of credits, consisting of bills receivable owned by them, and other credits due or to become due.

3. The amount of all deposits made with them by others, and also the amount of bills payable.

4. The actual value of bonds and stocks of every kind and shares of capital stock or joint stock of other corporations or companies held as an investment, or in any way representing assets, and the specific kinds and description thereof exempt from taxation.

5. All other property pertaining to said business, including real estate, which shall be specially listed and valued by the usual description thereof; the aggregate actual value of moneys and credits, after

deducting therefrom the amount of deposits, and the aggregate actual value of bonds and stocks, after deducting the portion thereof otherwise taxed in this state, and also the other property pertaining to the business, shall be assessed as provided by section thirteen hundred and five of this chapter, not including real estate, which shall be listed and assessed as other real estate."

Par. 11. That in and by the terms of Section 5219 of the Revised Statute- of the United States, being a revision of the acts of the Congress of the United States of June 3, 1864, 13 St. at Large, 111, and February 10, 1868, 15 St. at Large, 34, as follows:

"Nothing herein shall prevent all the shares in any association from being included in the valuation of the personal property of the owner or holder of such shares, in assessing taxes imposed by authority of the State within which the association is located; but the legislature of each State may determine and direct the manner and place of taxing all the shares of national banking associations located within the State, subject only to the two restrictions, that the taxation shall not be at a greater rate than is assessed upon other money capital in the hands of individual citizens of such State, and that the shares of any national banking association owned by non-residents of any State shall be taxed in the city or town where the bank
17 is located, and not elsewhere. Nothing herein shall be construed to exempt the real property of associations from either State, County or Municipal taxes, to the same extent, according to its value, as other real property is taxed."

Par. 12. That it is provided in and by the terms of Section One of the Act of Congress of April 24, 1917, as follows:

"The Secretary of the Treasury with the approval of the President, is hereby authorized to borrow, from time to time on the credit of the United States for the purposes of this Act, and to meet expenditures authorized for the national security and defense and other public purposes authorized by law not exceeding in the aggregate $5,000,000,000, exclusive of the sums authorized by Section four of this Act, and to issue therefor bonds of the United States.

The bonds herein authorized shall be in such form and subject to such terms and conditions of issue, conversion, redemption, maturities, payment, and rate and time of payment of interest, not exceeding three and one-half per centum per annum, as Secretary of the Treasury may prescribe. The principal and interest thereof shall be payable in United States gold coin of the present standard of value and shall be exempt, both as to principal and interest, from all taxation, except estate or inheritance taxes, imposed by authority of the United States, or its possessions, or by any State or local taxing authority, but such bonds shall not bear the circulation privilege.

The bonds herein authorized shall first be offered at not less than par as a popular loan, under such regulations prescribed by the Secretary of the Treasury as will give all citizens of the United States an equal opportunity to participate therein; and any portion of the

bonds so offered and not subscribed for may be otherwise disposed of at not less than par by the Secretary of the Treasury; but no commissions shall be allowed or paid on any bonds issued under authority of this Act."

18 Par. 13. That it is provided in and by Section One of the Act of the Congress of the United States of September 24, 1917, as follows:

"The Secretary of the Treasury, with the approval of the President, is hereby authorized to borrow, from time to time, on the credit of the United States for the purposes of this Act, and to meet expenditures authorized for the national security and defense and other public purposes authorized by law, not exceeding in the aggregate $7,538,945,460, and to issue therefor bonds of the United States, in addition to the $2,000,000,000 bonds already issued or offered for subscription under authority of the Act approved April twenty-fourth, nineteen hundred and seventeen, entitled 'An Act to authorize an issue of bonds to meet expenditures for the national security and defense, and, for the purpose of assisting in the prosecution of the war, to extend credit to foreign governments, and for other purposes.'"

And by Section 7 of said Act of September 24, 1917, it is provided as follows:

"None of the bonds authorized by section one, nor of the certificates authorized by section five, or by section six of this Act, shall bear the circulation privilege. All such bonds and certificates shall be exempt, both as to principal and interest from all taxation now or hereafter imposed by the United States, any State, or any of the possessions of the United States, or by any local taxing authority, except (*a*) estate or inheritance taxes, and (*b*) graduated additional income taxes, commonly known as surtaxes, and excess profits and war-profits taxes, now or hereafter imposed by the United States, upon the income or profits of individuals, partnerships, associations or corporations. The interest on an amount of such bonds and certificates the principal of which does not exceed in the aggregate $5,000, owned by any individual, partnership, association, or corporation, shall be exempt from the taxes provided for in subdivision (*b*) of this section."

19 Par. 14. That on, to wit, the 19th day of April, 1919, by reason of the publication thereof in accordance with the provisions therein contained, a certain act of the General Assembly of the State of Iowa, known as Senate File No. 479, and entitled "A bill for an act to amend Section One Thousand Three Hundred Four (1304) Supplemental Supplement to the Code, 1915, relating to property exempt from taxation" became effective, the said act being in words and figures as follows, to wit:

"Section 1. That section one thousand three hundred four (1304), supplemental supplement to the Code, 1915, be and the same is

hereby amended by adding after the semicolon in line sixteen thereof, the following:

'Provided, however, that in determining the assessed value of bank stock, the amount of obligations issued by the United States Government since the declaration of war against Germany, actually owned by a bank or trust company shall be deducted, and any bank or trust company which since January first, nineteen nineteen, has been assessed on its shares of stock without so deducting such United States Government securities shall be entitled to have its assessment on its shares reduced by the Board of Supervisors of the County in which such bank is located, so as to deduct from its total valuation such government securities. Provided, however, that no deduction shall be made unless the bank or trust company claiming the same shall have been the owner in good faith and not for the sole purpose of securing such deduction, of said securities for a period of more than sixty (60) days prior to December thirty-first of the year preceding that for which the assessment is made.'

Section 2. This act being of immediate importance shall become effective upon the publication thereof in the Des Moines Register and the Des Moines Capital, newspapers published in Des Moines, Iowa."

20 Par. 15. Said plaintiff further alleges that under and by virtue of the terms of the Act of Congress of December 23, 1913, the stock of the said Federal Reserve Bank is expressly and in terms rendered exempt from all classes of taxation by any and all authorities.

Par. 16. That on said January 1, 1919, there were within the limits of the City of Des Moines, Polk County, Iowa, persons other than corporations, a part of whose business is the receiving of deposits subject to check, on certificates, receipts or otherwise, or the selling of exchange, or in other words, there were within the limits of the City of Des Moines, persons engaged in business as private bankers within the meaning of Section 1321 of the Supplement to the Code of Iowa; that plaintiff is informed and believes, and upon such information avers, that the Drake Park Bank, the Cottage Grove Bank, the Oak Park Bank, and the Capitol Hill Bank, were each conducted by persons other than corporations, and as private bankers within the meaning of said section.

Par. 17. Plaintiff charges that said assessment is erroneous in that thereby there is subjected to taxation securities of the United States Government issued pursuant to the provisions of the Acts of Congress hereinbefore specifically referred to.

Par. 18. Plaintiff charges that said assessment is erroneous in that it subjects to assessment and taxation by said local taxing authority, securities of the United States Government to the extent of $1,442,486.00, contrary to the provisions of the Constitution of the United States, and the statutes in such cases made and provided.

Par. 19. Plaintiff charges that said assessment is erroneous in that it subjects to taxation by said local taxing authority, shares
21 of stock in a national banking corporation, organized and existing pursuant to the acts of the Congress of the United States, at a greater rate than is assessed money capital in the hands of individual citizens of said State.

Par. 20. Plaintiff charges that the said Drake Park Bank, Cottage Grove Bank, Oak Park Bank and Capitol Hill Bank, conducted as private bankers as aforesaid, are direct competitors of this plaintiff in the banking business in the City of Des Moines, Polk County, Iowa, and the capital employed by the said private bankers in said business is money capital in the hands of individuals in said State in competition with the capital of this plaintiff.

Par. 21. Plaintiff charges that said assessment is erroneous in that the same is not made in accordance with the provisions of Sections 1321 and 1322 of the Supplement to the Code of Iowa, for the reason that by said Section 1322 the Assessor is required to fix the value of the shares of stock of corporations based upon the capital, surplus and undivided earnings, disclosed by the statement therein required to be furnished by the corporation and required to contain the same information set forth in Section 1321 of the Supplement to the Code of Iowa, whereas by the fourth subdivision of Section 1321 the specific kinds and descriptions of bonds exempt from taxation is required to be stated, and that in and by the proceedings leading to said assessment such bonds have not been exempted from taxation, but have been considered in fixing the amount of said assessment.

Par. 22. Plaintiff charges that said assessment is erroneous in that in truth and in fact by the method pursued the assess-
22 ment is of the tangible assets of plaintiff and include as such securities of the United States Government of the face value of $1,442,486.00, contrary to the provisions of the Constitution of the United States, and the Statutes of the Congress of the United States in such cases made and provided.

Par. 23. That said assessment is erroneous in that it is contrary to the provisions of Section 5219 of the Revised Statutes of the United States, for that the shares of stock in national banking associations are immune from taxation by State or Local Taxing authority, except upon the express consent of the Congress of the United States, and such consent, if any, is evidenced by the provisions of said Section 5219 of the Revised Statutes, whereas said section, for the purpose of preserving the State power of taxation, is construed by the Supreme Court of the United States to consider the subject from the point of view of ultimate beneficial interest; that is, said section treats the stock interest, the stockholder and the bank as one and subject to one taxation by the methods which it provides.

Par. 24. Plaintiff charges that said assessment is erroneous in that the same is not made in accordance with the provisions of the

Act of the General Assembly of the State of Iowa, known as Senate File No. 479, which became effective on April 19, 1919.

Wherefore plaintiff prays that said assessment of its property and shares of stock as made by said Assessor, and as fixed by the action of the said Board of Review, be lowered to the extent of the par value of the said securities of the United States Government so actually owned and held by the plaintiff on January 1, 1919, and said plaintiff further prays that said assessment be lowered so that the amount of the securities issued by the United
23 States Government since the declaration of war against Germany actually owned by the plaintiff for sixty days prior to December 31, 1918, shall be deducted from such assessment, and said plaintiff prays for such other and further relief as to the court may seem meet and proper.

EXHIBIT A.

To the Honorable Mayor and Council of the City of Des Moines, Iowa:

Complainant, Des Moines National Bank, a corporation, organized under the laws of the Congress of the United States, having its principal place of business in Des Moines, Polk County, Iowa, respectfully shows to your Honorable Body, sitting as a Board of Review pursuant to the terms of Section 1370 of the Supplement to the Code of Iowa, as follows:

1. That on to wit, January 1, 1919, said Des Moines National Bank owned and held as an investment securities of the United States Government, issued pursuant to the Acts of Congress of April 24, 1917, and September 24, 1917, as amended, of the following kinds and classes, to wit:

Liberty Loan Bonds of the face value of.....	$487,800
Certificates of indebtedness of the United States Treasury	924,000.00
War Savings Stamps of the value of.....	3,686.00
Said Bank also on January 1, 1919, owned and held as an investment stock in the Federal Reserve Bank, created and organized under and by virtue of the Act of Congress of December 23, 1913, of the face value of.....	27,000.00
24 Making the total of such securities so held as an investment	$1,442,486.00

2. That on said January 1, 1919, this complainant made a statement to said Assessor, pursuant to the terms of Section 1322 of the Supplement to the Code of Iowa, and by said statement the capital stock of said corporation was shown to be $750,000.00, the amount of surplus of said corporation was shown to be $150,000.00 and the

amount of undivided earnings of said corporation was shown to be $5,849.02. But said corporation shows to your Honorable Body that under and by virtue of a certain contract existing between said complainant and the stockholders of the German Savings Bank, said complainant has agreed to pay to the said stockholders of the German Savings Bank, or to other persons in accordance with the provisions of said contract, the sum of $50,000.00, and interest thereon at 6% per annum from January 1, 1915, and that said sum of $50,000.00 and interest as aforesaid aggregating $12,000.00, constitutes under the terms of said contract, an obligation of said corporation, and should for the purpose of this proceeding be deducted from the total amount of capital, surplus and undivided earnings, leaving as the net capital, surplus and undivided earnings of said corporation the sum of $843,849.02.

3. That on said January 1, 1919, said complainant owned and held as an investment real estate of the total assessed value of $156,050.00.

4. That said Assessor has assessed the total value of the shares of stock of stock of said corporation at $748,799.00, or at an amount substantially and practically identical with the total capital, surplus and undivided earnings of said corporation, without deducting
25 said sum of $50,000.00, and interest as aforesaid, on account of said obligation arising from the said contract with the German Savings Bank, and including the value of said securities of the United States Government, less the value of the real estate owned and held by said corporation as an investment.

5. Complainant charges that said assessment is erroneous, in that thereby there is subjected to taxation securities of the United States Government, issued pursuant to the provisions of the Act of Congress of April 24, 1917, and of the Act of Congress of September 24, 1917, both as amended, and of the Act of Congress of December 23, 1913.

6. Complainant charges that said assessment is erroneous in that it subjects to assessment and taxation by sail local taxing authority securities of the United States Government, or securities issued under the authority of the United States Government, to the extent of $1,442,486.00, contrary to the provisions of the Constitution of the United States, and the Statutes in such cases made and provided.

7. Complainant charges that said assessment is erroneous in that the same is not made in accordance with the provisions of Sections 1321 and 1322 of the Supplement to the Code of Iowa, for the reason that by Section 1322 the Assessor is required to fix tthe value of the shares of stock of corporations based upon the capital, surplus and undivided earnings disclosed by the statement therein required to be furnished by the corporation, and which is required to contain the same information set forth in Section 1321 of the Supplement to the Code of Iowa, whereas by the fourth subdivision of said section 1321 the specific kinds and descriptions of securities exempt from taxation are required to be stated.

26 8. That said assessment is erroneous, in that in truth and in fact by the method pursued the assessment is of the tangible assets of complainant, and include as such, securities of the United States Government, or securities issued under the authority of the United States Government to the extent hereinbefore stated.

9. For the reason that unless the assessment made, pursuant to the provisions of Sections 1321 and 1322 of the Supplement to the Code of Iowa, is in truth and in fact an assessment against the property or tangible assets of complainant, then said sections of said Supplement to the Code of Iowa are unconstitutional and void, for that said sections provide that the property of the corporation shall not be otherwise assessed, while section 2 of Article 8 of the Constitution of Iowa provides "that the property of all corporations for pecuniary profit shall be subject to taxation the same as that of individuals."

10. That said assessment is erroneous in that it is contrary to the provisions of Section 5219 of the Revised Statutes of the United States because by said assessment the shares of stock of complainant are subjected to a greater assessment and tax than is imposed upon money capital in the hands of individual citizens in said State used and utilized in the same business.

11. That said assessment is erroneous in that it is contrary to the provisions of Section 5219 of the Revised Statutes of the United States, for that the shares of stock in National Banking Associations are immune from taxation by state or local taxing authorities, except upon the express consent of the Congress of the United
27 States, and such consent, if any, is evidenced by the provisions of said section 5219 of the Revised Statutes, whereas said Section, for the purpose of preserving the state power of taxation, is construed by the Supreme Court of the United States to consider the subject from the point of view of ultimate beneficial interest; that is, said section treats the stock interest, the stockholder and the bank as one, and subject to one taxation by the methods which it provides.

12. That said assessment is erroneous in that said Assessor has failed to deduct from the capital, surplus and undivided earnings of said corporation the amount of said obligation of said corporation of $50,000.00 on account of said German Savings Bank.

Wherefore said complainant prays that your Honorable Body adjust said assessment by lowering the total value of the shares of stock, or property of the complainant to the extent of the par value of the said securities of the United States Government, and by deducting from the total amount of capital, surplus and undivided earnings the said amount of the obligation of said complainant on account of the said German Savings Bank Contract.

EXHIBIT B.

To the Honorable Mayor and Council of the city of Des Moines, Iowa:

Complainant, Des Moines National Bank, a corporation, having its principal place of business in Des Moines, Polk County, Iowa, by way of amendment to its protest heretofore filed before your Honorable Body, sitting as a Board of Review pursuant to the terms of Section 1370 of the Supplement to the Code of Iowa, states:

28 1. That on to wit, the 19th day of April, 1919, by reason of the publication thereof in accordance with the provisions therein contained, a certain act of the General Assembly of the State of Iowa known as Senate File No. 479, and entitled "A bill for an act to amend Section One Thousand Three Hundred Four (1304) Supplemental Supplement to the Code, 1915, relating to property exempt from taxation" became effective, the said act being in words and figures as follows, to wit:

"Section 1. That Section one thousand three hundred four (1304), Supplemental Supplement to the Code, 1915, be and the same is hereby amended by adding after the semicolon in line sixteen thereof, the following:

'Provided, however, that in determining the assessed value of bank stock, the amount of obligations issued by the United States government since the declaration of war against Germany, actually owned by a bank or trust company shall be deducted, and any bank or trust company which since January first, nineteen nineteen, has been assessed on its shares of stock without so deducting such United States government securities shall be entitled to have its assessment on its shares reduced by the Board of Supervisors of the County in which such bank is located, so as to deduct from its total valuation such government securities. Provided, however, that no deduction shall be made unless the bank or trust company claiming the same shall have been the owner in good faith and not for the sole purpose of securing such deduction, of said securities for a period of more than sixty (60) days prior to December thirty-first of the year preceding that for which the assessment is made.'"

"Section 2. This act being of immediate importance shall become effective upon the publication thereof in the Des Moines Register, and the Des Moines Capital, newspapers published in Des Moines, Iowa."

29 2. Said complainant further shows to your Honorable Body that on to wit, November first, 1918, said complainant actually owned securities issued by the United States Government since the declaration of war against Germany, as follows:

Bonds issued pursuant to the Acts of Congress of April 24, 1917, and September 24, 1917, as amended, in the total sum of..... $215,550.00

War Savings Stamps of the value of..... 1,856.80
Certificates of indebtedness of the United States of the value of 1,213,000.00
That the minimum amount of such securities so actually owned in good faith and not for the sole purpose of securing a deduction thereof from the assessment of the shares of stock of said complainant during the said period of sixty days prior to December 31, 1918, was..... 951,274.96
Said bank also on January 1st, 1919, owned and held as an investment stock in the Federal Reserve Bank, created and organized under and by virtue of the Act of Congress of December 23rd, 1913, of the face value of 27,000.00

3. In addition to the reasons set forth in complainant's original protest, complainant charges that the assessment therein referred to is erroneous, because in contravention of the provisions of the Act of the General Assembly of the State of Iowa just hereinbefore referred to.

Wherefore said complainant in addition to the matters and
30 things included in the original protest filed herein, and without waiving any of the allegations thereof submits that your Honorable Body should at least adjust said assessment by lowering the total value of the shares of stock or property of the complainant to the extent of the value of said securities of the United States Government or securities issued under the authority of the United States Government, or that said assessment should be reduced by the said sum of $978,274.00.

That thereafter and on the 18th day of July, 1919, the defendants filed a

Demurrer

to said petition as follows:

Come now the defendants herein and demur to plaintiff's petition, and as grounds therefor to the court state:

Paragraph 1. Plaintiff is not entitled to the relief demanded nor to any relief.

Paragraph 2. Plaintiff's petition on its face shows that plaintiff is not entitled to the relief demanded, nor to any relief.

Paragraph 3. Chapter 257, Acts of the 38th General Assembly, under which plaintiff seeks to exempt its stock from assessment is in violation of Section 30 of Article 3 of the Constitution of Iowa, and is therefore unconstitutional and void.

Paragraph 4. Chapter 257, Acts of the 38th General Assembly, under which plaintiff claims exemption is not only a special law but in operation and effect will relieve one class of people from the

burden of taxation, all in violation of the Constitution of Iowa and especially Section 30 of Article 3.

31 *Ruling of Demurrer.*

Thereafter and on or about the 15th day of August, 1919, the demurrer of the defendants was overruled and having elected to stand upon their demurrer, thereafter and on the 22nd day of September, 1919, the following

Judgment and Decree

was rendered and entered of record:

And now at this time, to wit, September 22, A. D. 1919, this cause coming on to be heard on the demurrer of the defendants to the petition of the plaintiff, the plaintiff appearing by Sargent & Gamble, and the defendants appearing by H. W. Byers, and it being stipulated that a transcript of the records and proceedings before the said Board of Review shall be considered as filed in this cause, and the court having heard the argument of counsel and being fully advised in the premises, is of opinion that the said demurrer of the said defendants should be overruled.

It is accordingly ordered, adjudged and decreed by the court that the said demurrer of the said defendants to the petition of the plaintiff be, an the same hereby is, overruled, to which action of the court the said defendants except, and their exception is allowed.

The said defendants refusing to plead further, and now on August 14, 1919, electing to stand upon their said demurrer, it is ordered and adjudged by the court that the said plaintiff and appellant have and recover judgment against the said defendants as in said petition prayed.

It is thereupon, upon consideration thereof, ordered, adjudged and decreed as follows:

32 That the assessment returned by the Assessor and amended and as approved by said Board of Review in the year 1919 of $687,799.02 against the property or the capital stock, exclusive of real estate, of the Des Moines National Bank, shall be cancelled and set aside and held for naught, and that the Clerk of this Court shall send to the County Auditor and County Treasurer of Polk County, State of Iowa, a certified copy of this decree, and that the plaintiff have and recover of the defendants above named its costs herein taxed and found to be the sum of $—; to which action of the court the said defendants except, and their exceptions are allowed.

Notice of Appeal.

On the 6th day of November, 1919, the defendants and appellants perfected an appeal to the Supreme Court of the State of Iowa, by serving upon the counsel for plaintiff and the Clerk of the District Court of Polk County, Iowa, a notice of appeal, which was duly filed and entered of record.

Certificate.

We hereby certify that the foregoing is a full, true and complete abstract of all the record of said cause, including the pleadings, files, exhibits, evidence introduced or offered, all orders, rulings, exceptions and judgment, and all other proceedings upon the trial thereof essential to the determination of this appeal.

H. W. BYERS,
RESON S. JONES,
C. A. WEAVER,
PAUL HEWITT,
Attorneys for Appellants.

33 & 34 *Notice of Oral Argument.*

Notice is hereby given that the appellant will ask to be heard in oral argument on submission of this appeal.

H. W. BYERS,
Of Counsel for Appellants.

It is hereby certified that the actual cost of printing the foregoing abstract of record was $22.30.

H. W. BYERS,
Of Counsel for Appellants.

35 Filed Apr. 30, 1920. B. W. Garrett, Clerk Supreme Court.

In the Supreme Court of Iowa, May Term, 1920.

In Equity.

DES MOINES NATIONAL BANK, Plaintiff and Appellee,

vs.

THOMAS FAIRWEATHER, Mayor; JOHN BUDD, E. A. ELLIOTT, HARRY B. Frase, and Ben Woolgar, Councilmen of the City of Des Moines, Constituting the Local Board of Review of said City, and The City of Des Moines, Iowa, Defendants and Appellants.

Appeal from Polk County District Court.

Honorable Thomas J. Guthrie, Judge.

H. W. Byers, Reson S. Jones, C. A. Weaver, Paul Hewitt, Attorneys for Appellants.
Sargent & Gamble, Attorneys for Appellee.

Appellants' Brief and Argument.

Service of the within Brief and Argument is hereby accepted and receipt of copies acknowledged this 30 day of April, 1920.

SARGENT & GAMBLE,
Attorneys for Appellee.

36

Nature of Action.

The action was in equity and was an appeal from the action of the City Council of the City of Des Moines sitting as a Board of Review of said City in overruling the complaint of the appellee bank as to the action of the Assessor of said City in not deducting certain Liberty Bonds, Certificates of Indebtedness of the United States Treasury, War Savings Stamps, stock in the Federal Reserve Bank in amount aggregating $1,442,486.00 from the assessment against the shares of stock held by the share holders of said bank.

The Issues.

The appellee bank urged in its petition that the assessment against its shares of stock as fixed by the Assessor and approved by the Board of Review was erroneous for the following reasons:

1. Because said assessment subjected to taxation securities of the United States Government issued pursuant to the provisions of the Act of Congress of April 24, 1917, and of the Act of Congress of September 24, 1917, both as amended, and of the Act of Congress of December 23, 1913.

2. Because said assessment subjected to assessment and taxation securities of the United States Government issued under the authority of the United States Government to the extent of $1,442,486, contrary to the United States and the Federal statutes.

3. Because said assessment was not made in accordance with the provisions of Sections 1321 and 1322 of the Supplement to the Code of Iowa.

37 4. Because the assessment as made under the method pursued amounted to an assessment of the tangible assets of appellee bank and included securities of the United States Government.

5. Because Sections 1321 and 1322 of the Supplement to the Code of Iowa are unconstitutional.

6. Because said assessment is contrary to the provisions of Section 5219 of the Revised Statute- of the United States, for the reason that by said assessment the shares of stock of appellee bank are subjected to a greater assessment and tax than is imposed upon money capital in the hands of individual citizens in said State used and utilized in the same business.

7. Because said assessment is contrary to the provisions of Section 5219 of the Revised Statutes of the United States, for the reason that the shares of stock in National Banking Associations are immune from taxation by state or local taxing authorities, except upon the express consent of the Congress of the United States, and such consent, if any, is evidenced by the provisions of said Section 5219 of the Revised Statutes, whereas said section, for the purpose of preserving

the state power of taxation, is construed by the Supreme Court of the United States to consider the subject from the point of view of ultimate beneficial interest; that is, said section treats the stock interest, the stockholder and the bank as one, and subject to one taxation by the methods which it provides.

8. Because said assessment is in contravention of the provisions of Chapter 257, Acts of the 38th General Assembly, known as Senate File No. 479.

To this petition the defendants demurred in terms as follows:

"Come now the defendants herein and demur to plaintiff's petition, and as grounds therefor to the court state:

38 Paragraph 1. Plaintiff is not entitled to the relief demanded nor to any relief.

Paragraph 2. Plaintiff's petition on its face shows that plaintiff is not entitled to the relief demanded, nor to any relief.

Paragraph 3. Chapter 257, Acts of the 38th General Assembly, under which plaintiff seeks to exempt its stock from assessment is in violation of Section 30 of Article 3 of the Constitution of Iowa, and is therefore unconstitutional and void.

Paragraph 4. Chapter 257, Acts of the 38th General Assembly, under which plaintiff claims exemption is not only a special law but in operation and effect will relieve one class of people from the burden of taxation, all in violation of the Constitution of Iowa and especially Section 30 of Article 3."

Issues—How Decided.

The court overruled the demurrer and the defendants having elected to stand thereon decree and judgment was entered for the plaintiff-appellee, from which decree and judgment this appeal is being prosecuted.

Statement of Facts.

The facts are fully set forth in the petition as set out in the abstract from which, together with the demurrer, it will be observed that the important question is as to the validity of Chapter 257, Acts of the 38th General Assembly. The Assessor in making the assessment against the shares of stock of the appellee bank made no deduction from the value of said stock on account of Liberty Bonds and other securities of the United States held by the bank, and the City
39 Council sitting as a Board of Review approved the assessment as thus made. The bank insists that such deduction should have been made. There are other reasons stated in the petition why the assessment should not stand, but it seems to us the really important question in the case is as to whether the chapter above mentioned authorizing a deduction for Liberty Bonds and other securities is valid.

Errors Relied upon for Reversal.

The court erred in overruling the defendants' demurrer on the several grounds therein stated:

1. Because Chapter 257, Acts of the 38th General Assembly under which plaintiff bank claimed the right to a reduction from the assessment against its shares of stock on account of Liberty Bonds and other securities of the United States held by the bank is and was in violation of Section 30 of Article 3 of the Constitution of Iowa, and is unconstitutional and void.

2. Because said act contravenes and is in violation of Section 6, Article 1 of the Constitution of the State of Iowa, which requires the uniform operation of all laws of a general nature.

Brief.

I.

Section 6 of the Constitution provides:

"All laws of a general nature shall have a uniform operation; the General Assembly shall not grant to any citizen, or class of citizens, privileges or immunities, which upon the same terms shall not equally belong to all citizens."

Section 30 of the same instrument provides:

"The General Assembly shall not pass local or special laws in the following cases:
For the assessment and collection of taxes for state, county or road purposes;

* * * * * * *

In all the cases above enumerated, and in all other cases where a general law can be made applicable, all laws shall be general, and of uniform operation throughout the state;

* * * * * * *."

II.

The act under which appellee bank claims exemption from taxation for its shares of stock—or under which it claims the right to have deducted from assessment upon its shares of stock the amount of obligations of the United States held by it and which appellant insists is invalid is as follows:

"That section one thousand three hundred four (1304), supplemental supplement to the Code, 1915, be and the same is hereby amended by adding after the semi-colon in line sixteen thereof, the following: 'provided, however, that in determining the assessed

value of bank stock, the amount of obligations issued by the United States government since the declaration of war against Germany, actually owned by a bank or trust company shall be deducted, and any bank or trust company which since January first nineteen nineteen has been assessed on its shares of stock without so deducting such United States government securities shall be entitled to have its assessment on its shares reduced by the board of supervisors of the county in which such bank is located, so as to deduct from
41 its total valuation such government securities. Provided, however, that no deduction shall be made unless the bank or trust company claiming the same shall have been the owner in good faith and not for the sole purpose of securing such deduction of said securities for a period of more than sixty (60) days prior to December thirty-first of the year preceding that for which the assessment is made."

Chapter 257, Acts of the 38th General Assembly.

III.

The provisions of the Constitution quoted in Division I hereof requires in substance, that all laws of a general nature shall have a uniform operation; that no privileges or immunities shall be granted to any citizen, or class of citizens, which, upon the same terms shall not equally belong to all citizens; that no local or special laws for the assessment and collection of taxes for state, county or road purposes shall be passed by the legislature.

Does Chapter 257, referred to in Division II, violate any of these provisions? It is our contention that it does in this:

That in operation it is unfairly discriminatory, that is to say, that certain holders of corporate stock are granted privileges and immunities which are denied others. It is special and class legislation for the reason that its beneficiaries are relieved from their full share of the burden of taxation, not only that, but the statute in its operation not only relieves the beneficiaries from such burden but increases the burden upon all other persons holding the same kind and class of property.

It is not uniform in its operation for the reasons that the holders of shares of stock in banks and trust companies are granted a special privilege with respect to the method of determining the
42 amount that shall be assessed against such shares, a privilege not granted to persons holding shares of stock in other corporations.

In Warren vs. Henley, 31 Iowa, 31, Justice Beck said:

"I know of no restrictions upon the power of taxation except these two:

1. Taxes must be for objects that are public in their nature.

2. They must be uniform. By this I understand that they must not be imposed alone, nor unequally, upon particular individuals or classes. This rule, however, I understand, is applicable generally

to the principle or plan of taxation, and not to specific or particular taxes. It means that all individuals and all classes shall be uniformly taxed."

See also:

Cooley on Taxation, 2nd Ed., page 241;
Lyman vs. Telephone Company, 123 Iowa, 596; 99 N. W. 205;
Hawkeye Insurance Co. vs. French, 109 Iowa, 585;
Wheeler vs. Wrightman, L. R. A. (N. S.) 1916-A, page 855.

"The questions connected with taxation are every day becoming of more and more pressing importance. Certain it is that the more recent constitutions and the more recent judicial decisions show a disposition not to abandon the taxing power to the often irregulated and despotic will of our fluctuating and hasty legislation."

Sedgwick on State and Constitutional Law, page 673.

"Legislation in favor of different classes of individuals, in order to be valid, must extend to and embrace all persons who are or may be in like circumstances, and the classification must be natural and reasonable.

Classification of subjects, to be constitutional, must be based on substantial distinction which makes one class so different
43 from another as to suggest the necessity of different legislation with respect thereto."

Hubbell et al. vs. Higgins, 148 Iowa, 36; 126 N. W. 914.

"It is conceded that the legislature has the power to classify both subjects and individuals for the purpose of taxation, but this power may not be used to unfairly discriminate either between persons or property."

State vs. Fairmount Creamery Company, 153 Iowa, 702, 855; 133 N. W. 895.

See also:

State vs. Garbroski, 111 Iowa, 496-498; 82 N. W. 959;
Commonwealth vs. Alden Coal Company, 251 Pa. 134; 96 Atl. 246; L. R. A., (N. S.) 1916-F, page 154-156.

This last case holds that a tax on anthracite coal mined within the state and leaving exempt the bituminous coal so mined, violates a constitutional provision that all taxes shall be uniform upon the same class of subjects within the territorial limits of the authority levying the same.

IV.

The assessment in question was made under the provisions of sections 1321 and 1322 of the supplement to the Code of Iowa, and does not in any sense subject to taxation securities of the United

States government issued pursuant to the provisions of the act of Congress of April 24, 1917, and of the act of Congress of September 24, 1917, both as amended, and of the act of Congress of December 23, 1913, since the assessment is not against the property
44 of the bank but against its shares of stock in the hands of shareholders.

National State Bank vs. Burlington, 119 Iowa, 696; 94 N. W. 234.

Head vs. Board of Review of the City of Jefferson, 170 Iowa, 300; 152 N. W. 600, where it was held:

"Under Rev. St. U. S. Pp. 5219 (U. S. Comp. St. 1913, Pp. 9784), providing that shares of a national bank may be included in the valuation of personal property of the holders thereof, in assessing state taxes, that each state may determine the manner and place of taxing such shares within the state, but that taxation shall not be at a greater rate than that on other moneyed capital in the hands of individuals, shares of stock of national banks and of state banks must be assessed to the individual owners, and the state's assessment against such holders, even though paid by the bank in their behalf, is not an assessment on the bank or upon its property, but an assessment to the individual stockholders, irrespective of whether the holdings of the bank are exempt in the hands of individuals, since the bank and the property which it owns are separate and distinct from the shares of the individual stockholder, and the tax on the shares is not a tax on the capital of the bank, whose holding of bonds or other property are not taxable by the state."

See also:

First National Bank of Council Bluffs vs. City of Council Bluffs, 161 N. W. 706.

National Bank of Commerce in St. Louis vs. Allen, Internal Revenue Collector, 223 Fed. Rep. 472, where Judge Garland says:

"Under this legislation of Congress the states have provided for the taxation of shares in national banks and also provided
45 for the payment of the same by the bank. It is, therefore, now the law that a national banking corporation and its property is separate and distinct from its shares of stock, and that while the tax levied upon a national bank itself by a state would be invalid, a tax levied by a state upon the shares of stock in a national bank is valid. Van Allen vs. Assessors, 70 U. S. (3 Wall.) 573, 18 L. ed. 228; Home Savings Bank vs. Des Moines, 205 U. S. 503, 27 Sup. Ct. 571, 51 L. ed. 901; Hawley vs. Malden, 232 U. S. 1, 34 Sup. Ct. 201, 58 L. ed. 477; Clement National Bank vs. Vermont, 231 U. S. 120, 34 Sup. Ct. 31, 59 L. ed. 147."

Home Savings Bank vs. Des Moines, 205 U. S. 503, where Justice Moody, who wrote the opinion, says:

"But another line of cases cannot so easily be dismissed. They were relied upon by the Supreme Court of Iowa, and the respect due to the opinion of that court demands that the reasons why we think those cases do not apply to the case at bar should be fully stated. These cases relate to the right of the state to tax at their full value shares of stock as the property of the shareholders. Although the states may not, in any form, levy a tax upon United Securities, they may tax, as the property of their owners, the shares of banks and other corporations whose assets consist in whole or in part of such securities, and, in valuing the shares for the purpose of taxation, is not necessary to deduct the value of the national securities held by the corporation whose shares are taxed. The right to tax the shares of national banks arises by congressional authority, but the right to tax shares of state banks exists independently of any such authority, for the state requires no leave to tax the holdings of its own corporations. The right of such taxation rests upon the theory that shares in corporations are property entirely distinct and independent from the property of the corporation. 'The tax of an individual in respect to his shares in a corporation is not regarded as a tax upon the corporation itself. The dis-
46 tinction now settled beyond dispute, was mentioned in M'Culloch vs. Maryland, 4 Wheat. 316, 4 L. ed. 579, where, in the opinion of Chief Justice Marshall declaring a tax upon the circulation of a branch bank of the United States beyond the power of the state of Maryland, it was said that the opinion did not extend 'to a tax imposed on the interest which the citizens of Maryland may hold in this institution, in common with other property of the same description throughout the state.' The distinction appears, however, to have been first made the basis of a decision in Van Allen vs. Assessors, (Churchill v. Utica), 3 Wall. 573, 18 L. Ed. 229. The national bank act, as amended in 1864 (13 Stat. at L. 112, Chap. 106) (Rev. Stat. 5219, U. S. Comp. Stat. 1901, p. 3502), permitted the states to include in the valuation of personal property for taxation the shares of national banks 'held by any person or body corporate' under certain conditions not necessary here to be stated. Acting under the authority of this law, the state of New York assessed the shares of Van Allen in the First National Bank of Albany. At that time all the capital of the bank was invested in United States securities, and it was asserted that a tax upon the individual in respect to the shares he held in the bank was, unless the holdings in the United States securities were deducted, a tax upon the securities themselves. But a majority of the court held otherwise, saying by Mr. Justice Nelson: 'The tax on the shares is not a tax on the capital of the bank. The corporation is the legal owner of all the property of the bank, real and personal; and, within the powers conferred upon it by the charter, and for the purposes for which it was created, can deal with the corporate property as absolutely as a private individual can deal with his own. * * * The interest of the shareholder entitled him to participate in the net profits earned by the bank in the employment of its capital, during the existence of its charter, in proportion to the number

of his shares; and, upon its dissolution or termination, to his proportion of the property that may remain of the corporation after the payment of its debts. This is a distinct, independent
47 interest or property, held by the shareholder like any other property that may belong to him. Now, it is this interest which the Act of Congress has left subject to taxation by the states, under the limitations prescribed.'

In an opinion in which Justices Wayne and Swayne joined, Chief Justice Chase dissented from the judgment upon the ground that taxation of the shareholders of a corporation in respect of their shares was an actual though an indirect tax on the property of the corporation itself. But the distinction between a tax upon shareholders and one on the corporate property, although established over dissent, has come to be inextricably mingled with all taxing systems, and cannot be disregarded without bringing them into confusion which would be little short of chaos.

The Van Allen case has settled the law that a tax upon the owners of shares of stock in corporations, in respect of that stock, is not a tax upon United States securities which the corporations own. Accordingly, such taxes have been sustained by this court, whether levied upon the shares of national banks by virtue of the congressional permission, or upon shares of state corporations by virtue of the power inherent in the state to tax the shares of such corporation. The tax assessed to share holders may be required by law to be paid in the first instance by the corporations themselves, as the debt and in behalf of the shareholder, leaving to the corporation the right to reimbursement for the tax paid from their shareholders, either under some express statutory authority for their recovery or under the general principle of law that one who pays the debt of another, at his request, can recover the amount from him. First Nat. Bank vs. Kentucky, 9 Wall. 353, 19 L. Ed. 701; First Nat. Bank vs. Chehalis County, 166 U. S. 440, 41 L. Ed. 1069, 17 Sup. Ct. Rep. 629; Merchant's & M. Nat. Bank vs. Pennsylvania, 167 U. S. 461, 42 L. Ed. 236, 17 Sup. Ct. Rep. 829; Cleveland Trust Co. vs. Lander, 184 U. S. 111, 46 L. Ed. 456, 22 Sup. Ct. Rep. 394. The theory sustaining these cases is that the tax was not upon the cor-
48 porations' holdings of bonds, but on the shareholders' holdings of stock; and an examination of them shows that in every case the tax was assessed upon the property of the shareholders, and not upon the property of the corporation. There is nothing in them which justifies the tax under consideration here, levied as has been shown, on the corporate property. Without further review of the authorities it is safe to say that the distinction established in the Van Allen case has always been observed by this court, and that, although taxes by states have been permitted which might indirectly affect United States securities, they have never been permitted in any case except where the taxation has been levied upon property which is entirely distinct and independent from those securities. On the other hand, whenever, as in these cases, the tax has been upon the property of the corporation, so far as that property has consisted of such securities, it has been held void."

See also:

Hawley vs. Madden, 232 U. S. 1; 58 L. Ed. 481;
Elliott National Bank vs. Gill, 210 Fed. Rep. 933.

Argument.

While appellee bank states it objections to the assessment involved in this proceeding in several different ways, there is but one real question in the case, and that is, as to whether Chapter 257 Acts of the 38th General Assembly, authorizing the deduction of Liberty Bonds and other federal securities held by the bank from the assessment made against the shares of its stock in the hands of share holders is repugnant to the constitution of this state, and especially that part of the constitution quoted in Division I of the brief.

It is true that among the objections urged is the suggestion that an assessment against the shares of a national bank is in fact and effect an assessment against the property of the bank, and
49 therefore, in violation of the laws of the United States.

This contention is so fully disposed of both by our own Court and the Supreme Court of the United States in the cases cited in Division IV of our brief that we do not discuss it further at this time, and content ourselves with a brief discussion as to the character and effect of the Chapter of the 38th General Assembly, under which appellee bank is seeking to have all of its shares of stock relieved from taxation for any purpose so long as it holds the Federal securities referred to in its petition.

It will be observed that the total assessment against the shares of the bank stock, after making deduction for real estate and other items, was $687,799.02. It was this exact amount that the court below by its decree cancelled and set aside, thus relieving, as we indicate above, the holders of all the shares of stock in the appellee bank from the payment of any taxes whatever for the year in question.

The tremendous importance of this case is shown by the fact that 19 cases involving this same question are pending in this court, all from the city of Des Moines, and in which stipulations have been entered into providing that the decision in this case shall control in all the others. In addition to what will happen to the city of Des Moines and Polk County if this legislation is sustained, every county, city and town in the state of Iowa will be deprived of any revenue upon all that class of property represented by shares of stock in national and state banks, and the loss will necessarily have to be made up by increasing the burden of taxation upon other classes of property and individuals.

We doubt very much whether, in effect and results that must necessarily follow if this statute is upheld, a more vicious
50 piece of legislation was ever written upon the statute books of Iowa.

In our investigation we have been unable to find one single good reason for an act that makes it possible for an investor in bank stock to escape the payment of taxes when the holders of shares of stock

in other corporations must pay, and not only must they pay their just proportion but pay enough in addition to make up for the loss of revenue on that large body of property known as bank stock.

It will no doubt be claimed that one reason for the classification or distinction, or whatever it may be called, between bank stock and other stock, and between the individual holding bank stock and one holding the stock of insurance, manufacturing, mercantile and industrial corporations was the desire of the legislature and the state to encourage the purchase of Liberty Bonds, thus assisting the government in the emergency of war, etc., but just why is it more important that Liberty Bonds should be purchased by banks rather than by corporations generally.

No doubt it will be claimed that the exemption is an inducement to the purchase of these securities by people generally, including banks, but as a matter of fact in actual practice the legislation under discussion is an inducement to individuals to invest their money in bank stock rather than government securities. At any rate, inducement to the purchase of federal securities is nowhere recognized as a sound basis for legislation making a distinction or classification of property and persons for the assessment and collection of taxes. The authorities all hold that the distinction or classification must be one that is naturally and reasonably suggested by the
51 character of the property or the class in which the individual falls.

Just how this rule can be applied to an act that relieves an investor in shares of bank stock from the payment of his just share of the tax necessary to maintain the community in which he lives simply because the bank issuing the shares of stock has invested all or a portion of its capital in federal securities is more than we can understand.

As indicated above, the vice of the act in question is not alone in the exemption to the shareholder, that in itself is vicious, but the harm goes deeper and impairs the revenues and credit of the municipalities of the state.

This truth is fully borne out by the following quotation from the December volume of the Journal of American Bankers Association, page 135:

"Current discussions of problems in politics and economics are repeatedly bringing forth suggestions and so-called 'plans' which depend very largely, and far more than is generally appreciated, upon the extent to which each proponent may be relieved from financial burdens which the government now places upon the activity. We refer to the various efforts to obtain exemption from taxation.

"This relief from taxation would result by the government.

"First, acquiring the title to property which would be taxable if in private ownership; or,

"Second, issuing tax exempt public securities for the private benefit of individuals; or,

"Third, granting the subsidy of tax exemption to the private property of favored individuals.

"Some projects may involve but one kind of exemption, whereas others may involve any two or all. Whatever the plan, the more property becomes tax exempt the greater will be the tax burden on that not exempt.

"Selfishness of individuals and special interests, the weak-
52 ness of public officials, and also a natural generosity with other people's money, all combine to favor the growth in the number and size of tax exemptions.

"But tax exemption is fiscally as well as equitably unsound. In the fact of unprecedented revenue needs any attempt to 'dry up' the sources of public revenue by allowing tax exemption must be assumed to be improper—the burden of proving its necessity and propriety for every year of its proposed term must be upon its advocates. Furthermore, when tax exemption is sought through federal legislation it is imperative to determine the effect thereof upon the revenue systems of the state and localities, for these jurisdictions are closer to the people, and further impairment of their revenues and credit will endanger political and social activities of the greatest importance to individuals.

"Far better that existing exemptions should be repealed than that this unscientific, confiscatory and inequitable method of granting preferment at the public cost should be extended."

This quotation states the situation in a nutshell, and indicates clearly what will happen to the revenues of the cities and towns of this state if Chapter 257, Acts of the 38th General Assembly, is sustained by this court.

Practically every dollar of bank stock held in the National and State banks of Iowa will be taken out entirely of the list of taxable property, and the assessor when he goes to list shares of bank stock for assessment will be met again, as he often was prior to the decision in the Van Allen case, with the statement that the bank holds, and has had for sixty days prior to the 31st of December federal securities in an amount in excess of the value of its shares of stock, and demand will be made for a deduction accordingly.

That an act of the legislature which makes such a situation possible is inequitable and unfair and in violation of the consti-
53 & 54 tution of this state seems so clear that we do not extend this argument at this time, and we will be curious to know on what theory counsel for appellee bank will seek to sustain the exemption claimed.

Respectfully submitted,

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It is hereby certified that the cost of printing the within Brief and Argument was $16.45.

H. W. BYERS,
Of Counsel for Appellant.

55 Filed June 2, 1920. B. W. Garrett, Clerk Supreme Court.

In the Supreme Court of Iowa, May Term, 1920.

In Equity.

DES MOINES NATIONAL BANK, Appellee,

vs.

THOMAS FAIRWEATHER, Mayor; JOHN BUDD et al., Councilmen, Constituting Board of Review, and City of Des Moines, Iowa, Appellants.

Appeal from Polk District Court.

Hon. Thomas J. Guthrie, Judge.

Sargent & Gamble,
For Appellee.

H. W. Byers, Reson S. Jones,
C. A. Weaver, Paul Hewitt,
Nelson Miller,
For Appellants.

Appellants' Additional Brief and Argument.

Due and legal service of the within Additional Brief and Argument is hereby accepted, and the receipt of a true copy thereof acknowledged this 2nd day of June, 1920.

SARGENT & GAMBLE,
Attorneys for Appellee.

56 *Additional Brief and Argument.*

Introductory.

Learning that there are a large number of cases pending in the district courts over the state involving the same questions as those in this case, and realizing the tremendous importance to the state of the issues presented the appellants file this Additional Brief and Argument. *In pellants file this Additional Brief and Argument.* In argument we shall endeavor to confine ourselves principally to points presented, but not argued, in appellants' first Brief and Argument. In presenting this brief it is not necessary to re-state the nature of the action, the issues, nor how they were decided. But we add the following additional

Error Relied On.

3. Because none of the matters and things set out by appellee in his complaint and amendment thereto presented to the appellant

Board of Review, and none of the matters and things set out in appellee's petition in equity filed in the district court on appeal from the Board of Review, are sufficient in law to entitle the appellee to the relief prayed, and therefore the court erred in overruling the 1st and 2nd grounds upon which the demurrer was based.

Brief of Points.

1.

A share of stock in a National Bank is a distinct article of property. It is a property right separate and distinct from the
57 property rights held by the corporation, and as such separate and distinct property right it may be taxed without regard to the property held by the corporation.

Head vs. Board of Review, 170 Iowa, 300;
First Nat. Bk. vs. Independence, 123 Iowa, 484;
Stewart vs. Pierce, 116 Iowa, 733, 751.

Federal Decisions.

Van Allen vs. Assessors, 3 Wall., 573; 18 Law Ed. 229;
Home Savings Bk. vs. Des Moines, 205 U. S., 508; 51 Law Ed. 901;
Nat. Bk. of Com. vs. Internal Rev. Co., 223 Fed. (C. C. A.) 472.

(*a*) Basing its decision on the above distinction the Nebraska Supreme Court has held that including Liberty Bonds in the assets of a bank for the purposes of fixing the value of its shares for taxation purposes, was not to tax the bonds.

In re First Nat. Bk. of Aurora, 171 N. W. (Neb.) 912.

(*b*) Recognizing the above distinction as established, there can be no Constitutional right in the Legislature to grant exemption to bank shareholders of the Government obligations held, not by them individually, but by what in law is a different person the bank, without also granting such exemptions to shareholders in all corporations generally. These obligations are not the property of the shareholders, but of a different person.

2.

The Iowa laws for the taxation of bank stock does not tax
58 the property of the bank or trust company, but the tax is laid against the share of stock, which in law is the property of the stockholder.

Section 1322 of the 1913 Supplement to the Code;
Section 1325 of the Code of 1897.

(*a*) Section 1325, supra, expressly gives the bank a lien on the stock for such taxes as it is compelled to pay on it for the stockholder.

It secures the bank against loss, and makes certain that the tax is paid by the shareholder and not by the bank.

(*b*) Such a statute requiring the bank to pay the tax in the first instance with a remedy over, is constitutional and legal, and it is a usual and common method for taxing bank stock.

First Nat. Bk. vs. Com., 9 Wall. 353; 19 Law Ed. 701;
Cummings vs. Mer. Nat. Bk., 101 U. S. 153; 25 Law Ed. 903;
Aberdeen vs. Chehalis Co., 166 U. S. 440;
McQiure vs. Bd. of Review, 71 Ala. 401;
Whitney vs. Parker, 41 Fed. 402.

(*c*) What the Iowa law really does is to place a value upon the stock, which is measured by only such tangible assets of the bank as by law would go to the shareholders if the affairs of the bank were closed out, less the investment in real estate. Of necessity this must be only the minimum value in actual money in all cases. Consideration of intangible values could never further reduce this value, but in most cases would increase it.

3.

It is permissible for the state to provide different methods for valuing different classes of property for the purposes of taxation, and to adopt that method which is best adapted to secure a just and fair valuation of the class of property in question.

Dubuque vs. C. D. & M. R. R., 47 Iowa, 196, 200;
U. S. Express Co. vs. Ellyson, 28 Iowa, 370;
Layman vs. Telephone Co., 123 Iowa, 391.

59 (*a*) And a reasonable approximation toward the actual value is all that is required to comply with constitutional provisions.

Stanley vs. Bd. of Supervisors, 121 U. S. 535; 30 Law Ed. 1000.

4.

Where the general statutes of the state (such as section 1305 of the Iowa Code) provide that all property, both real and personal, shall be valued for taxation at its actual value, a law governing the valuation of special classes of property cannot be held unconstitutional because in the administration of the general statute some officers do not properly perform their duties and return valuations thereunder that are less than the actual value.

Cummings vs. Mer. Nat. Bk. 101 U. S. 153; 25 Law Ed. 903;
Mich. R. R. vs. Powers, 201 U. S. 301; 50 Law Ed. 765;
Missouri etc. vs. Shannon, 100 Tex. 396; 10 L. R. A. (N. S.) 681;
Central vs. Assessors, 75 N. J. L. 134; 67 Atl. 677;
Stanley vs. Bd. of Sup., 121 U. S. 535; 30 Law Ed. 1000;
Richards vs. Rock Rapids, 31 Fed. 505;
First Nat. Bk. vs. Farwell, 7 Fed. 518.

5.

The power of the state to tax corporations was not derived from Section 2 of Article 8 of the Constitution, as seems to be the thought of the Federal Court in the recent case of Iowa Loan & Trust Co. vs. Fairweather, 252 Fed. 605. The right exists independent of that section as a right of sovereignty. As stated by Justice Cole:

"The manifest purpose and intent of this section is, to place
60 the property of corporations, just like the property of individuals, completely within the legislative power for the purposes of taxation; so that the legislature could use the same authority and discretion in enactment of laws for the taxation of property of corporations, as it could use in the enactment of laws for the taxation of the property of individuals."

Dubuque vs. Ill. Cen. R. R., 39 Iowa, 56 at pp. 68 and 97;
Davenport vs. R. R., 38 Iowa, 644;
U. S. Express Co. vs. Ellyson, 28 Iowa, 370.

6.

Chapter 257, Acts 38th General Assembly, are unconstitutional and void, because:

(*a*) To be of uniform operation within constitutional provisions, the law must operate the same, and have the same effect, upon every person subtaining the same relationship to Liberty Bonds as do the persons for whose benefit the law was passed.

Iowa R. R. Land Co. vs. Soper, 39 Iowa, 112, 116;
Haskel vs. Burlington, 30 Iowa, 232, 237.

(*b*) In the case at bar, the thing to be considered is the relationship which the taxpayer (the shareholder, not the bank) sustains towards the U. S. securities involved. It is not the relationship sustained by the bank that must be considered. The effect of the Act in question is to grant exemption from taxation to the shareholders, not because of U. S. securities held by such shareholders, but because of such securities held by the banking corporation, which in law is a different person. The relationship existing between bank shareholders and the securities involved is identically the same as that of shareholders in corporations generally who own such securities, and as no exemption is granted to shareholders of corporations generally, the
61 Act grants privileges and immunities to one class of persons which it does not grant to others similarly situated, and therefore is not of uniform operation.

State vs. Santee, 111 Iowa, 1;
State vs. Gabroski, 111 Iowa, 496;
State vs. R. R., 113 Iowa, 30.

7.

The record fails to show that the appellee bank has either been assessed, or that it has paid any taxes on the Federal Reserve Bank

Stock owned by it. Hence the decision in the recent case of Bank of California vs. Richardson, 1919 Advance Sheets (Co-op. Ed.) 212, cannot apply. The nub of that decision was that Section 5219 permits the taxation by the States of the same value but once, and a state having once taxed certain value represented by shares in the Mills bank, it could not again tax the same value by any method, even by that of taxing other shares when such other shares represented the same value.

Argument.

1.

The point made by appellant in his brief that the share of stock is a separate property right, and is held by the stockholder by virtue of a separate and distinct title from that by which the corporation holds title to its assets, is so well stated and so strongly supported by authority in appellants first brief that we shall make no effort to supplement it, except to add one recent authority where Liberty Bonds were the subject of the decision, and to add one additional suggestion in argument.

The authority referred to is In Re First National Bank of
62 Aurora, 171 N. W. (Neb.) 912. In that case the Nebraska court held that under a statute taxing the stock, the inclusion of Liberty Bonds in the assets of a National Bank for the purpose of placing a value upon the stock, was not to tax the Liberty Bonds, but only the separate property of the stockholders. That court refused to follow the decision in Iowa Loan & Trust Co. vs. Fairweather, 252 Fed. 605, but on the contrary cited several cases from the Iowa court in opposition thereto, and then says:

"We see no reason to depart from the construction that the tax provided for is levied upon the share of stock in the hands of the individual stockholders, and is not levied upon the property of the bank."

In re First Nat. Bk. of Aurora, 171 N. W. (Neb.) 912.

Additional in argument,—It is the common law conception of a corporation that it is a fictitious person, and that it holds title to its property by a title which is separate and distinct from the title to its stock held by the shareholder. This elementary conception of a corporation as a fictitious person, and holding to it under any and all conditions, situations and circumstances, is the leading and most distinctive feature of the law of corporations. Only by so regarding it can the vast and multifold business transactions of the present day be conducted without involving shareholders in unending litigation and confusion. For if that distinction be not maintained, then in logic and principle the stockholder should be personally liable for all the debts and obligations of the corporation, the same as a partner, and such liability would introduce chaos into the business world. The law cannot justify a holding that for the
63 purposes of taxation the title of the stockholder is the same as the title of the corporation, but that for the purpose of

meeting the debts and obligations of the corporation that title is not the same. The law seeks justice and consistency, not the reserve.

As far as National banks are concerned, any doubts, if any was ever held on this question, would seem to be set at rest by the adoption by Congress of Section 5219 of the Revised Statutes which expressly recognizes a share of stock as a separate property right. By its provisions consenting to its inclusion for taxation the same as the other property of individuals Congress consents to its recognition as a separate property right. Recognizing the share as a separate property right for the purpose of being included for taxation, it must to be consistent, be so regarded for all purposes having to do with taxation. Otherwise the law becomes a medley of inconsistency and uncertainty. It cannot be a separate property right for the purpose of "being included in the valuation of the personal property of the owner," but not a separate property right when it comes to distinguishing between the property of the shareholder and the property of the corporation. Having thus consented to the taxation of the share as is the other property of the stockholder, and as a separate property right, it is clearly apparent that inconsistency begins the moment it is claimed that taxation of the share is taxation of the bonds and other property held by the corporation. To so hold ignores the fictitious nature of the corporation, and ignores the recognition of the share as a separate property right. It is not believed that Congress intended that a share of National Bank stock should be considered in more than one light for all purposes connected with taxation,—that it should be considered a separate property right for the purpose of being valued with the property of the shareholder, but not a separate property right for the purpose of separating it from the property of the corporation. For what purpose was the right to value the share given, if no tax can be levied upon it? Congress did not intend to take away with one hand a right which it gave with the other.

64

The beneficial interest which the shareholder has in his share of stock, is not the same as the beneficial interest which the banking corporation has in its assets. Before the shareholder can receive and enjoy any part of the corpus of his share, the bank must go through a period of liquidation, sometimes requiring years, and sometimes fraught with vexatious litigation and transactions in the results of which the shareholder is not directly concerned. To say that the right to share in what remains of the bank's assets after that period has passed is the same as the property rights of the corporation itself, is to ignore first principles and outstanding facts, in both law and economics.

The recent case of Bank of California vs. Richardson, 1919 Advance Sheets, (Co-op. Ed.) 212, does not deny to the states the right to tax the shares of stock and basing their value upon all of the bank's assets even though some of such assets are themselves tax exempt. On the contrary it expressly affirms such right. What is there said about taxing the beneficial interest, was not said in the sense that the court intended to prohibit the inclusion of tax exempt securities

in the bank's assets for the purpose of valuing the shares, but it has reference to the beneficial interest which the state taxes,—that is, all of the bank's assets in its entirety,—when it taxes the stockholder, and the state having once taxed a certain beneficial interest
65 (value) by taxing certain shares, it cannot again tax the same beneficial interest (value) by any method, even though it taxes other shares when such other shares represent the same value. The state's power is exhausted. The decision is grounded upon the thought that section 5219 prohibits to the states the laying of more than one tax upon the same value. This is made clear by the fact that the court excluded the stock ownership in the Mills National Bank, because it was a National Bank, and taxes had already been paid on that value, but it included the stock ownership in the Mission Bank, it being only a state bank and therefore its taxation was not governed by section 5219. The right of the state to tax the shares upon all the assets of the National Bank, whether tax exempt or not, is upheld because that right is given by the section, but having once exercised that right by taxing the shares, and through them the beneficial interest, the right of the state is exhausted because no further right is given.

2.

It is claimed by appellee that the assessment being by virtue of section 1322 based upon the capital, surplus and undivided earnings, is in fact a tax upon the tangible assets of the bank and not upon the stock. If such claim is sound, then it must apply equally well under all possible conditions. If it will not meet this test, but on the contrary, in some fairly common situations, will lead to absurd conclusions, then the doctrine is not sound. Suppose then a case where a bank had been in operation for about a year with a capital of, say, $100,000.00. At the beginning of business the capital had all been invested in a building and fixtures, real
66 estate, in which to do business. The deposits made by customers during the year amount to $200,000.00. These deposits had been invested and re-invested in different kinds of property, but at the end of the year they had all been re-invested in Liberty Bonds. The earnings of the bank made by the different transactions amount to $5,000.00. Under the Iowa law the stock would be valued based upon this $5,000.00 of undivided earnings. Is it not as clear as anything can be that taxing the stock of this bank upon a valuation of $5,000.00 is not taxing the Liberty Bonds, nor the money invested in them? Not one penny of that $5,000 valuation went into the purchase of the Liberty Bonds, but only the deposits were used for that purpose. Proceeding still further, it is equally clear that taxing the shares of stock of this bank upon a valuation of $5,000 (capital and undivided earnings less real estate), is not taxing the capital, surplus and undivided earnings as such. Not one penny of tax is paid by the shareholders because of the capital of this bank. The capital was all deducted because of its investment in real estate. Let us suppose that after a year or two a surplus

has been accumulated, and the bank then makes a further investment in real estate sufficient to absorb the surplus and undivided earnings. After such investment is made there will not be one cent of taxes for the shareholders to pay on their shares for in that case it will all be deducted. Yet both in legal theory and in economics the bank will still be the holder of capital, surplus and undivided earnings. We submit that a law which in many cases does not levy a tax at all, notwithstanding that there is in existence both capital, surplus and undivided earnings, but leaves them out of consideration entirely, cannot be said to be a tax upon the capital, surplus
67 and undivided earnings in the sense that it is levied upon these items as such.

These illustrations show the unsoundness of the claims made by appellees. Their doctrines lead to absurd conclusions in many cases that must be of fairly common occurrence. To a limited extent that situation is present in every case where a bank owns real estate or stock in a building company. The nub of the reasons for these absurd results is that the property right, the thing that is taxed, is not the same as the property right of, or the things held by, the corporation. For that reason appellees' doctrines will not apply equally well under all conditions. Sometimes the capital, surplus and undivided earnings are invested in one thing, sometimes in another. One year it is Liberty Bonds, the next it is real estate, the next it is loaned to private individuals, and the next it is invested promiscuously in many *many* different things. Sometimes the investment is tax exempt, at other times it is not. But the property right, the thing that is taxed under the Iowa law, is the right of the shareholder to share in what is left of the assets of the bank if its affairs were closed up, and this right is by no means identical with the character of the property in which the bank's assets are invested. The character of these investments change and *are* in a continual state of flux, but the right of the stockholder remains the same, changing only as to the amount of his interest, which to a large extent depends upon the amount of the capital, surplus and undivided earnings as they may change from year to year, for they are the only substantial things left, plus the real estate, when the affairs of the bank are closed out.

68 If the statement required by the statute to be furnished by the bank is honestly made, then it will require all the assets of the bank there shown other than the capital, surplus and undivided earnings, and real estate, to pay off the liabilities of the bank other than what the bank owes to the stockholders on their stock, for the purposes of taxation and as long as the bank carries the assets on its books at that value it could not well be claimed that the assets were not sufficient to pay off the liabilities to the extent that they are offset against such liabilities, and as they are valued in the statement. If the bank makes such claim, then it must follow that their statement has not been honestly made, and some of their claimed assets must be water. The state is justified in conclusively assuming that the assets are worth what the bank in its sworn statement says they are worth until the bank changes their value on its books. When it

charges off any of its assets as worthless, it must of necessity replace that loss by drawing on either the capital, surplus or undivided earnings, and that would correspondingly reduce the assessed value of its stock under the present Iowa law. Taking the statement, therefor-, in all things at its face value, it is clear that if the statement is honestly made, if the affairs of the bank were wound up there would be left for distribution among the stockholders the capital, surplus and undivided earnings, plus the real estate; and from this it is clear that, if the bank is honestly conducted, and the statement is honestly made, the bank would have neither capital, surplus nor undivided earnings to report unless the stock had at least a minimum value of the total of these three elements. (It should be remembered that the assessment is based upon the capital, not upon the capital
69 stock. See section 1322 and Bank vs. Hayes, 171 N. W. 715.)

And so it results that what the Iowa law really does is to place a value upon the stock which is measured and determined by only such of the tangible assets of the bank as would be distributed to the stockholders in case the bank's affairs were closed out, less the investment in real estate. Consideration of intangible values could never further reduce this value of the stock, but could only increase it. The value thus fixed must of necessity be the minimum value in actual money in all cases.

The fact that this value bears a close similarity in amount to the capital, surplus and undivided earnings, is but an incidentt of the situation. It does not change the character of the tax or assessment. It is an incident which must necessarily result because of the fact that a share of stock, which is only representative in character, must of necessity reflect in its market value the actual value of the property which is back of the stock, and which is the only tangible thing which gives value to the stock. As the amount of the capital, surplus and undivided earnings are large or small, so the value of the stock must of necessity be greater or less.

Since section 1325 of the Code gives the bank a lien upon the stock for any taxes which it may pay for the stockholder, that section conclusively settles the question of who pays the tax, whether the bank as a bank, or the stockholder. When the money is actually taken out of the pockets of the stockholders to pay the tax, it is not conceivable how it can be claimed that the tax is not upon the stock, but upon the assets of the bank as a bank. This test, of who actually pays the tax, should alone be decisive of this question. It is
70 a higher and more significant test than any other that could be applied.

3 and 4.

Congress has not prescribed the method to be pursued in valuing National Bank stock. It has left that to be done by the states, each using its own peculiar method. It has put but two restrictions upon the states: First—The taxation must not be at a greater rate than upon moneyed capital. Second—The stock must be taxed in

the district where the bank is located. It is permissible to provide different methods for valuing different classes of property. See brief of points. If, therefore, the value placed upon a share of stock is the minimum value measured by the tangible assets of the bank, over and above its liabilities as shown by the statement, that stock cannot in the nature of things be over-valued. It is over-valuation, the necessary concomitant of over-assessment, that is prohibited by section 5219, not undervaluation. The tangible assets,—capital, surplus and undivided earnings,—by which the value of the stock is measured, are not subject to further appraisement because they are in fact Dollars and have a value of One Hundred Cents, no more and no less.

But, so careful was the state not to discriminate against the banks that it enacted section 1322-1*a* of the 1913 Supplement, which provides that the value of bank stock thus fixed shall be taxed on only Twenty (20%) per cent thereof, while all other property by section 1305 is valued at its actual value and taxed at Twenty-five (25%) per cent thereof.

We must assume that when section 1305 says that all other property shall be valued at its full value, that it means just what
71 it says, and that all other property is thus valued by the taxing officials. For the purpose of testing the Constitutionality of sections 1322 and 1322-1*a* we must take it for granted that section 1305 is enforced and other property rightly valued at its full value. For reasons well known in law no other theory is permissible. See citations under brief of points No. 4.

A reasonable approximation toward the actual value is all that is required, but even if we concede that other property was not always valued at its full value, the difference between 20% and 25% of the actual value will go a long way to cure it. 20% is only 80% of the 25%, the taxable value at which all other property is taxed. It cannot be said from these figures that the necessary result is to discriminate, against the bank shareholder, but rather the contra.

A proper view of section 5219 is that discrimination does not result against National Banks where the alleged discrimination, or results complained of, must necessarily reach to and effect in equal manner and degree the State banks and trust companies. In other words, unless there is some deleterious results to National Banks, which does not, by virtue of the same statute reach to state banks, there is no discrimination.

5.

The provision "the property of such corporation shall not be otherwise assessed" found in Section 1322 of the 1913 Supplement, and as there used is applicable to banks, is also found in identically the same words in Section 1323 of the Code, where the words are applicable to corporations generally. The identity of this language in
72 the two sections discloses the purpose of the state was to tax banks and other corporations by the same general plan. The reason for these words is suggested by the federal decision

elsewhere referred to, Iowa Loan & Trust Co. vs. Fairweather, 252 Fed. 605,—and as there explained was that there are two general plans for taxing property invested in corporations;—one by taxing the corporation itself, and the other by taxing the stockholder. Iowa has now adopted the plan of taxing the stockholder, and for that reason forbids the taxing of the corporation itself, though it must be remembered that there is no State Constitutional restriction on so doing. The legislature evidently made this choice because the federal statute, section 5219, forbids the taxing of a National Bank as such, and it was thought equitable to avoid discrimination between them and other banks and corporations.

It is quite clear that the past decisions of this court do not hold that Section 2 of Article 8 of the Iowa Constitution absolutely requires the taxation of the corporation as such. It is neither a grant of power, nor a command. It is more in the nature of a declaration of policy. The state grants exemptions from taxation to individuals,—likewise it may grant exemptions to corporations. The state provides different methods for valuing the property of individuals,—likewise it may provide different methods for valuing the property of corporations. The state taxes the property of individuals,—likewise it may tax the property of corporations. The best definition of this provision is that made by Mr. Justice Cole as set out in point 5 of the Brief of Points (In Dubuque vs. Illinois Cent. R. R.) and it has never been construed by this court to mean anything else but what Justice Cole there says it means. The property of corporations is subjected to taxation to the same extent, and
73 for the same purposes, and in the same manner as is the property of individuals.

6.

Reference is here made to the unconstitutionality of *of* Chap. 257, Acts 38th G. A., not because it is expected to add anything to the force of what has already been said in appellants' first brief, but to call attention to the incongruity resulting if this enactment shall be upheld. This incongruity results alone from the fact that the statute is an attempt to give a taxpayer an exemption of property not owned by such taxpayer, but owned by what in law is another person. The value of the bank shares is based upon the capital, surplus and undivided earnings of the bank, but in fact in probably one-half of the cases over the state, the bank owns Liberty Bonds far in excess of their capital, surplus and undivided earnings. Hence it results that the statute gives the shareholders a right to an exemption far in excess of the value of the shares which it is proposed to tax. This incongruity, as stated, results alone from the faulty reasoning at the bottom of the legislation. The thing that is taxed is the property of the shareholder, while the thing that is exempt to him by this statute, is not the shareholders' property, but is the property of the corporation, and these are not similar in amount.

Attention is also called to the fact that Chapter 257 above referred to, is limited to Bank and Loan and Trust Company stock. For

specific instances in which the statute works inequality we refer to two cases which in recent years were before this court, in which assessment of the shares of stock by the same general plan was made, and in which the corporation was not a bank or loan
74 and trust company. We refer to Valley Investment Co. vs. Des Moines, 152 Iowa, 84, and Koochiching vs. Mitchel, 173 N. W., 151. The statute grants no exemption to the shareholders of these corporations, yet it is well known that such corporations were large purchasers of Liberty Bonds. These are but specific cases referred to for illustration,—there are many others.

Objection is made that bank shares are discriminated against in favor of moneyed capital. If the funds of the private banker are taxed under section 1321 then it is taxed on 25 per cent of the value, which in view of the 20 per cent for bank stocks as provided by section 1322-*la*, would be a discrimination — favor of bank stock rather than against it. If the funds are taxed as money capital under section 1322-*la*, then the rate is 20 per cent, the same as bank stock, which is not discrimination.

If the objection is based upon the thought that the assessed value of the real estate permitted to be deducted under section 1322 is less than the real value, the answer is that the wrongful administration of the general statute (a failure to value the real estate at its full value as required by section 1305) is not a ground for declaring another statute unconstitutional. See brief.

If it is based upon the refusal to permit the shareholders to deduct the bank's Liberty Bonds, the objection is not ingenious in view of the decision of the the U. S. Supreme Court in the Van Allen case, 3 Wallace 573; 18 Law. Ed. 229, because under that case, never overruled, the shareholder is not permitted to deduct the bank's Liberty Bonds, because the shareholder has no proprietary rights over the bonds and they are not in law his property, and
75 hence can have no right to such deduction.

The shareholder is not engaged in the banking business in competition with the private banker. It is the bank as a corporation that is engaged in the banking business, and no taxes at all are levied against the bank as a corporation. The share holder merely owns the shares the same as he owns a farm.

Under the decisions of the U. S. Supreme Court, Section 5219 does not even require that the value of the bank's real estate holdings shall be deducted from the value of the shares. See Com. Nat. Bank vs. Chambers, 182 U. S. 556, 45 Law. Ed. 1227.. Peo. Nat. Bk. vs. Marye, 107 Fed. 579; 48 Law. Ed. 180. Amoskeag Sav. Bk. vs. Purdy, 231 U. S. 373; 58 Law. Ed. 274. If this is not required how can it be claimed that in Iowa, where such deduction is permitted and where after such deduction the shares are taxed on only 20% as against 25% on all other property that there is discrimination in favor of moneyed capital. If anything, it is the reverse.

It cannot be said that discrimination necessarily results under the statutes in question. If any in any case does result, it is only such as is common to all taxations systems, none of which can be made absolutely perfect.

Section 1321 was originally enacted for the primary purpose of furnishing data upon which to assess private bankers. In as much as private bankers must be assessed in the same way as private individuals it was necessary that a statement should be made of what tax exempt securities were included in the business of the private banker. The section was not enacted at the time that Chapter 63 of the Acts 34th General Assembly were passed, being the 76–78 present statute for taxing bank stock. But in requiring the banks to furnish a statement of their business, it was referred to by requiring them to furnish a statement of all things required by section 1321. Hence it cannot be said that requiring the banks to furnish a statement of tax exempt securities evidences an intention of the legislature to exempt such securities to the shareholders, because the section is primarily in the Code for an entirely different purpose, that of assessing private bankers, and the information of the tax exempt securities, while necessary for the taxation of the private banker, is mere surplusage in the case of the incorporated bank. Section 1322 specifically states what shall be deducted in the case of the incorporated bank, and the inclusion of one, will necessarily exclude all other things.

Upon the whole case we are convinced that Chapter 257, Acts 38th General Assembly is unconstitutional and void and that the long line of decisions, not only of this court but of the United States court, to the effect that a share of stock is property separate and distinct from the property of the corporation, should be again affirmed and upheld; and that not only well established legal principles, but public policy requires that the decision of the lower court in this case should be reversed, to the end that the revenue of the municipalities and the state may not be impaired and the bank shareholder be compelled to bear his just share of the public burdens the same as other persons.

Respectfully submitted,

NELSON MILLER,
H. W. BYERS,
For Appellants.

79 Filed June 14, 1920. B. W. Garrett, Clerk Supreme Court.

In the Supreme Court of Iowa, May Term, 1920.

In Equity.

DES MOINES NATIONAL BANK, Plaintiff and Appellee,

vs.

THOMAS FAIRWEATHER, Mayor; JOHN BUDD, E. A. ELLIOTT, HARRY B. Frase, and Ben Woolgar, Councilmen of the City of Des Moines, Constituting the Local Board of Review of said City, and The City of Des Moines, Iowa, Defendants and Appellants.

Appeal from Polk County District Court.

Honorable Thomas J. Guthrie, Judge.

H. W. Byers, Reson S. Jones, C. A. Weaver, Paul Hewitt, Attorneys for Appellants.
Sargent, Gamble & Read, Attorneys for Appellee.

Appellee's Brief and Argument.

Service of the within Brief and Argument is hereby accepted and receipt of copies acknowledged this 12th day of June, 1920.

H. W. BYERS,
C. W. LYON,
Attorneys for Appellants.

80 Nature of the Case.

This action is in equity, being an appeal from the action of the City Council of the City of Des Moines sitting as a Local Board of Review in overruling the complaint of appellee as to the action of the Assessor of said City in assessing the shares of stock or property of appellee bank as of January 1st, 1919. After the perfection of the appeal from the action of the Board of Review in accordance with the statutes in such cases made and provided the appellee filed with the Clerk of the District Court of Polk County its petition in equity, which is accurately set forth in appellants' abstract of the record and presenting the following

Facts.

Appellee is a corporation organized under the laws of the Congress of the United States and as such at the times involved was engaged in the business of banking in the City of Des Moines. On January 1st, 1919, appellee owned and held as an investment securities of the United States Government issued pursuant to the acts of Congress of April 24th, 1917, and September 24, 1917, as amended, of the following kinds and classes:

Liberty Bonds of the face value of.....	$487,800.00
Certificates of indebtedness of the United States Treasury,.....	924,000.00
War Savings Stamps of the value of.....	3,686.00
Appellee also on said date owned and held as an investment stock in the Federal Reserve Bank, created and organized under and by virtue of the Act of Congress of December 23, 1913, of the face value of	27,000.00
Making the aggregate of said securities.....	$1,442,486.00

81 On January 1st, 1919, as required by Section 1322 of the Supplement to the Code of Iowa appellee made a statement to the City Assessor showing its capital stock, surplus and undivided earnings to aggregate $905,849.02, but that from such aggregate the amount of $62,000.00 should be deducted as representing an obligation of appellee under a contract specifically referred to. Included in the assets of the bank from which such capital, surplus and undivided earnings were computed were said securities of the United States Government aggregating $1,442,486.00; that appellee owned and held as an investment real estate of the total assessed value of $156,050.00, and that the City Assessor assessed the total value of the shares of stock of appellee at $748,799.00, or at an amount substantially and practically identical with the total capital, surplus and undivided earnings of said corporation, including the value of said securities issued by the United States Government, and including the amount of the obligation of said bank on account of said contract. The minimum amount of securities issued by the United States Government since the declaration of war against Germany actually owned by appellee in good faith and not for the sole purpose of securing a deduction thereof from the assessment of the shares of stock during the period of sixty days prior to December 31, 1918, was $951,274.96.

The Local Board of Review on April 30th, 1919, by resolution corrected said assessment by reducing the same to the sum of $687,799.02, this correction requiring the reduction of the assessment by the sum of $62,000.00 represented by the amount of the obligation outstanding under said contract with the German Savings Bank.

On January 1st, 1919, there were in the City of Des Moines persons other than corporations, a part of whose business was the
82 receiving of deposits subject to check, on certificates, receipts, or otherwise, or the selling of exchange, or in other words, there were within the limits of said city persons engaged in business as private bankers within the meaning of Section 1321 of the Supplement to the Code of Iowa; that the Drake Park Bank, the Cottage Grove Bank, Oak Park Bank and Capital Hill Bank, were each conducted by persons other than corporations and as private bankers within the meaning of said act, and that such private bankers were direct competitors of appellee.

After averring the provisions of Sections 1321 and 1322 of the Supplement to the Iowa Code, as also the provisions of Section 5219 of

the Revised Statutes of the United States and the applicable provisions of the Acts of Congress of April 24, 1917, and September 24, 1917, as also the provisions of the Act of the General Assembly of the State of Iowa now included in the Session Laws of the 38 General Assembly as Chapter 257, said appellee averred that said assessment was erroneous upon the following grounds:

1. Because said assessment subjected to taxation said securities of the United States Government.

2. Because said assessment subjected to taxation said securities of the United States Government contrary to the provisions of the Constitution of the United States and the statutes in such cases made and provided.

3. Because said assessment subjected to taxation shares of stock in a National Banking corporation, organized as aforesaid, at a greater rate than money capital in the hands of individual citizens of a State.

4. Because said assessment was not made in accordance with the provisions of Sections 1321 and 1322 of the Supplement to the Code of Iowa, for the reason that by said Section 1322 the Assessor
83 is required to fix the value of the shares of stock of corporations based upon the capital, surplus, and undivided earnings, disclosed by the statement therein required to be furnished by the corporation and required to contain the same information set forth in Section 1321 of the Sup-lement to the Code of Iowa, whereas by the fourth subdivision of Section 1321 the specific kinds and descriptions of bonds exempt from taxation is required to be stated, and that in and by the proceedings leading to said assessment such bonds have not been exempted from taxation, but have been considered in fixing the amount of said assessment.

5. Because in truth and in fact by the method pursued the assessment is of the tangible assets of the appellee and includes said securities issued by the United States Government.

6. Because said assessment is contrary to the provisions of section 5219 of the revised Statutes of the United States, for that the shares of stock in national banking associations are immune from taxation by State or Local Taxing authority, except upon the express consent of the Congress of the United States, and such consent, if any, is evidenced by the provisions of said Section 5219 of the Revised Statutes, whereas said section, for the purpose of preserving the State power of taxation, is construed by the Supreme Court of the United States to consider the subject from the point of view of ultimate beneficial interest; that is, said section treats the stock interest, the stockholder, and the bank as one and subject to one taxation by the methods which it provides.

That said assessment is not made in accordance with the provisions of Chapter 257, Acts of the 38th General Assembly, known as Senate File 479.

That unless the assessment made pursuant to the provisions
84 of Sections 1321 and 1322 of the Sup-lement to the Code of Iowa is in truth and in fact an assessment against the property or tangible assets of appellee then said sections of said Supplement to the Code of Iowa are unconstitutional and void, for that said sections provide that the property of the corporation shall not be otherwise assessed, while section 2 of Article 8 of the Constitution of Iowa provides "that the property of all corporations for pecuniary profit shall be subject to taxation the same as that of individuals".

To this petition appellants demurred, and for grounds of their demurrer stated the following:

"Paragraph 1. Plaintiff is not entitled to the relief demanded nor to any relief.

Paragraph 2. Plaintiff's petition on its face shows that plaintiff is not entitled to the relief demanded, nor to any relief.

Paragraph 3. Chapter 257, Acts of the 38th General Assembly, under which plaintiff seeks to exempt its stock from assessment is in violation of Section 30 of Article 3 of the Constitution of Iowa, and is therefore unconstitutional and void.

Paragraph 4. Chapter 257, Acts of the 38th General Assembly, under which plaintiffs claims exemption is not only a special law but in operation and effect will relieve one class of people from the burden of taxation, all in violation of the Constitution of Iowa and especially Section 30 of Article 3."

How the Issues Were Decided.

The Court overruled the demurrer, and, appellants having elected to stand thereon, decree and judgment was entered for this appellee, from which decree and judgment an appeal was prosecuted to this court.

85 ## Propositions of Appellee.

The court below rightfully overruled the demurrer filed by appellants for the following reasons:

I.

By the terms of Chapter 257, Acts of the 38th General Assembly, it is provided:

"In determining the assessed value of bank stock, the amount of obligations issued by the United States Government since the declaration of war against Germany, actually owned by a bank or trust company shall be deducted, and any bank or trust company which since January 1st, 1919, has been assessed on its shares of stock without so deducting such United States Government securities shall be entitled to have its assessment on its shares reduced by the Board

of Supervisors of the County in which such bank is located, so as to deduct from its total valuation such government securities. Provided, however, that no deduction shall be made unless the bank or trust company claiming the same shall have been the owner in good faith and not for the sole purpose of securing such deduction, of said securities for a period of more than sixty (60) days prior to December thirty-first of the year preceding that for which the assessment is made."

Therefore upon the face of the petition, which was admitted by the demurrer, the assessment was contrary to the provisions of this act and therefore erroneous.

II.

Appellants cannot claim that Chapter 257, Acts of the 38th General Assembly, is unconstitutional as infringing Section 30 of Article 3, or Section 6 of Article 1, of the Constitution of the State of Iowa, because:

86 (*a*) Unless a person setting up the unconstitutionality of a statute belongs to the class for whose sake the constitutional protection is given, or the class primarily protected, the question will not be considered.

(*b*) Appellants are mere agencies of the legislature and cannot refuse obedience to a legislative act limiting their taxing powers on the ground that such an act violates the provisions of the constitution prohibiting discriminatory or class legislation, since appellants were not of the class discriminated against.

(*c*) A statute will not be declared unconstitutional on a borrowed objection—a grievance which can occur only to one not complaining.

III.

Chapter 257, Acts 38th General Assembly, is valid and not subject to the claim of unconstitutionality asserted by appellants, because

(*a*) Said act does not infringe the provisions of Section 30, Article 3, and Section 6, Article 1, of the Constitution of Iowa, and is not class legislation, nor does said act confer a special privilege or immunity.

(*b*) To justify a court in holding a statute unconstitutional the statute assailed must be plainly at variance with the constitution, or in other words, unless there is a clear, plain and palpable transgression of constitutional limitations, the statute will be upheld, all doubtful questions will be resolved in favor of the validity of the act.

(*c*) The Legislature is invested with power under the Constitution to enact laws affecting given classes, and if the distinction

between classes is reasonable and not purely artificial, and the statute is applicable to all who come within the limits of the classification, its constitutionality cannot be questioned.

87 (*d*) By a long course of legislation banks and trust companies have been uniformly classified for purposes of taxation. Indeed the very law under which the assessment involved in this case was made recognizes and enforces such a classification.

(*e*) Said Act of the Legislature was in fact enacted to remove a discrimination existing against banks and trust companies, in that securities of the character referred to were not under the law subject to assessment or taxation in the hands of individuals or in the hands of private bankers, nor were such securities subject to assessment or taxation to the same degree when in the hands of corporations generally.

IV.

Sections 1321 and 1322, Supplement to the Code of Iowa, require the listing of bonds exempt from taxation in the statement thereby made the basis of assessment, and said sections contemplate the fixing of the assessment upon the aggregate amount of capital, surplus and undivided earnings subject to taxation.

V.

(*a*) By the method pursued the assessment in this case is against the property of appellee, and therefore subjects to taxation bonds issued by the United States Government exempt because of the provisions of the acts of Congress authorizing their issuance, and because of general rules of comity.

(*b*) Unless the assessment made pursuant to the provisions of Sections 1321 and 1322 of the Supplement to the Code of
88 Iowa is in truth and in fact an assessment against the property or tangible assets of appellee, then said sections of the said Supplement to the Code of Iowa are unconstitutional and void, for that said sections provide that the property of the corporation shall not be otherwise assessed, while section 2 of Article 8 of the Constitution of Iowa provides "that the property of all corporations for pecuniary profit shall be subject to taxation the same as that of individuals."

VI.

(*a*) Said assessment is erroneous in that it is contrary to the provisions of Section 5219 of the Revised Statutes of the United States, because the shares of stock of appellee are subjected to a greater assessment and tax than is imposed upon money capital in the hands of individuals in said State used and utilized in the same business.

(*b*) Said assessment is erroneous in that it is contrary to the provisions of Section 5219 of the Revised Statutes of the United States, for that the shares of stock in National Banking Associations are immune from taxation by state or local taxing authorities, except upon the express consent of the Congress of the United States, and such consent, if any, is evidenced by the provisions of said Section 5219 of the Revised Statutes, whereas said section, for the purpose of preserving the state power of taxation, is construed by the Supreme Court of the United States to consider the subject from the point of view of ultimate beneficial interest; that is, the stock interest, the stockholder and the bank are treated as one and subject to one taxation by the methods provided.

89

Brief.

I.

In fixing the assessment of bank stock the amount of securities issued by the United States Government since the declaration of war with Germany and held in good faith by the bank for sixty days prior to December 31st of the year preceding are required to be deducted.

Chapter 257, Acts 38th General Assembly.

II.

One who is not on his own account entitled to question the constitutionality of a statute cannot object that it is unconstitutional as to others.

Thompson vs. Mitchell, 110 N. W. 901, 133 Iowa, 527.

Courts avoid invalidating statutes unless the question whether they are valid arises for and demands decision. Therefore the contention that a particular statute is unconstitutional because arbitrarily discriminating against a class will be ignored when presented by one who is not a member of that class.

State vs. Collins, 178 Iowa, 73.

A statute will not be declared unconstitutional on a borrowed objection—a grievance which can occur only to one not complaining.

Hunter vs. Coal Company, 175 Iowa, 245.

90 Unless a person setting up the unconstitutionality of a statute belongs to the class for whose sake the constitutional protection is given on the class primarily protected, the question will not be considered.

Lee vs. State of New Jersey, 207 U. S. 67.

Municipal corporations cannot attack the validity of an act of the Legislature on the ground that it is discriminatory as against a class of citizens, since such corporations are not members of such class and may collect their necessary revenue from other sources.

City of Montgomery vs. Royal Exchange Assur. Cor., (Ala.) 59 Southern, 508;
City and County of San Francisco vs. McGovern, 152 Pacific 980;
People vs. Pitcher, (Colo.) 138 Pac. 509;
People vs. Leddy, (Colo.) 123 Pac. 824;
People vs. C. & W. I. R., 100 N. E. 35;
State vs. Cage, (Texas), 176 S. W. 928;
State vs. Braxton County Court, 55 S. E. 382;

III.

The desire of the court is to shield, if possible, every statute from every charge of unconstitutionality. Between two possible constructions, the court will hold to that which preserves rather than that which destroys.

Hunter vs. Coal Company, 175 Iowa, 245;
Shaw vs. Marshalltown, 131 Iowa, 128;
Sisson vs. Board, 128 Iowa, 442.

Legislation affecting given classes may be validly enacted, and when the distinction between classes is reasonable and not purely artificial and the statute is applicable to all who come within the limits of the classification its constitutionality cannot be questioned.

Bradey vs. Mattern, 125 Iowa, 158.

91 Such classification may be predicated upon the nature of the business engaged in.

Brady vs. Mattern, Supra;
Primghar State Bank vs. Rerick, 96 Iowa, 238;
State vs. Creamery Co., 153 Iowa, 708;
Hubbell vs. Higgins, 148 Iowa, 40;
Houston vs. City, 176 Iowa, 455.

Previous legislation recognizes the classification of banks and trust companies as proper.

Iowa Code Supplement, Section 1310;
Iowa Code Supplement, Sections 1321 and 1322.

Property and shares of stock in corporations other than banks and trust companies are taxed in a manner vastly different from the taxation of banks and trust companies under the existing statutes of the State of Iowa.

Iowa Code Section 1319 prescribes method of assessing manufacturing corporations.

Iowa Code Section 1315 prescribes method of assessing grain, ice and coal dealers.

Iowa Code Section 1318 prescribes method of assessing corporations engaged in merchandising.

Iowa Code Supplement 1310 specifies five mill levy on all corporate stocks other than banks and trust companies while the stock

of such latter companies is subjected to the full levy on twenty per cent of assessed value.

IV.

Section 1322, Supplement to the Code of Iowa, requires assessment of bank stock to be fixed on the basis of capital, surplus and undivided earnings determined by a statement therein required.

92 Section 1321, including the elements to be specified in such statement, requires the listing of bonds exempt from taxation.

In order that these sections may be valid it must be held that such assessment shall be laid upon capital (not capital stock), surplus and undivided earnings, which themselves are subject to taxation.

First National Bank vs. Hayes, 171 N. W. 715.

Property of corporations for pecuniary profit shall be subject to taxation the same as that of individuals.

Section 2, Article 8, Constitution of Iowa.

The assessment in this case is predicated upon the existence of tangible elements of assets of appellee bank, and unless sections 1321 and 1322 are construed to authorize the assessment of the property of corporations the same are unconstitutional as infringing section 2, Article 8 of the Iowa Constitution.

Iowa Loan & Trust Co. vs. Fairweather et al., 252 Fed. 605, at 612;

Sioux City Stock Yards Case, 149 Iowa, 5;

Hawkeye vs. French, 109 Iowa, at 588.

V.

Appellee bank is a federal corporation. Its shares of stock are not taxable except by consent of Congress. This consent is evidenced by Section 5219 Revised Statutes, with the qualification that the taxation shall not be at a greater rate than is assessed upon other money capital in the hands of individual citizens of such State.

"It is undoubted that the statute, (section 5219) from the purely legal point of view, with the object of protecting the Federal corporate agencies which it created from state burdens, and se-

93 curing the continued existence of such agencies despite the changing incidents of stock ownership, treated the banking corporations and their stockholders as different. But it is also undoubted that the statute for the purpose of preserving the state power of taxation, considering the subject from the point of view of ultimate beneficial interest, treated the stock interest, that is, the stockholder, and the bank, as one, and subject to one taxation by the methods which it provided."

Bank of California vs. Richardson, U. S. 63 L. Ed. 212.

Looking through the form to the substance of Section 1322, Iowa Code Supplement, the assessment involved in this case was against the property of the bank and in so far as the value of such property was made up of Liberty Bonds and Federal securities was void.

Iowa Loan & Trust Co. vs. Fairweather, et al., 252 Fed. 605.

The giving to a tax a particular name, or the use of some form of words, cannot take away the duty of the court to consider the real nature and effect of such taxes.

C. O. & G. Co. vs. Harrison, 235 U. S. 292;
G. H. & S. A. R. Co. vs. Texas, 210 U. S. 217;
Home Insurance Company vs. New York, 134 U. S. 594;
Home Savings Bank vs. Des Moines, 205 U. S. 503;
Owensboro Nat. Bank vs. Owensboro, 173 U. S. 664.

A rate (of taxation) may be greater not only owing to a higher percentage of the levy but in consequence of some method of assessment or taxation which would discriminate against national banks unfavorably.

People vs. Weaver, 100 U. S. 539.

94 Other money capital within the meaning of Section 5219 Revised Statutes includes money in the hands of individuals employed in a similar way, invested in loans, or in securities for the payment of money, either as an investment of a permanent character, or temporarily with a view to sale or repayment and reinvestment.

Mercantile Nat. Bank vs. Mayor, 121 U. S. 138.

Argument.

The record in this case is a comparatively short one. The decision below turned upon the overruling of the demurrer of appellants to the petition of appellee bank. All the allegations of the petition for the purpose of this proceeding are therefore deemed admitted, and while the record is a short one with no conflict of fact involved, there nevertheless remains a number of important questions in the case. In view of the importance of these questions we have indulged in a more extended citation of authority, and outline of propositions, than we otherwise would. We shall first consider the propositions I and II.

I.

Chapter 257, Acts of the 38th General Assembly, became effective April 19, 1919, and before the Local Board of Review finally made the assessment involved in this case. A reading of this chapter clearly shows the legislative direction to the local authorities to deduct the amount of federal obligations named from the total amount of capital, surplus and undivided earnings, shown by the statement

of the bank in accordance with Section 1322 of the Supple-
95 ment to the Code of Iowa. The only question raised against the validity of this statute and apparently the only excuse which is offered by appellants for their refusal to comply with its explicit directions is the claim that it is discriminatory as against other corporations, and therefore unconstitutional and void.

Bearing in mind the clear directions contained in the statute, which indeed speak for themselves, as to the duty of the local authorities in a case of this character, we desire to proceed to the discussion of the proposition that appellants may not attack this statute on such ground. Appellants are the members of the City Council constituting the Local Board of Review pursuant to the provisions of Section 1370 of the Iowa Code as amended, and the City of Des Moines, a Municipal corporation. It is therefore apparent that appellants are not members of any class of tax payers against whom it is asserted any discrimination exists by virtue of the terms of this law. On the other hand the members of the Board of Review exercise their powers only by virtue of authority delegated by the legislature. The City of Des Moines exists only because of statutory enactments.

Indeed a most striking thing about this attack is that very assessment under review was made pursuant to the terms of sections 1321 and 1322 of the Code Supplement of Iowa, which in themselves operate only upon banks and trust companies. The class denominated in the section of the statute under which the assessment approved was laid is the same class named in chapter 257, Acts of the 38th General Assembly, which appellants refused to comply with because they say it is discriminatory.

It would be a strange rule of law which would permit minor officials of a municipal subdivision of a state to rise higher
96 than the legislative will, expressed in the statutes of the state, and strike down, because of their own notions, such legislative will, and yet such is the attempt in this case.

It has long been the settled rule in this state that this court will not invalidate a statute regularly enacted because of a borrowed objection. In other words, this court will not entertain an attack on the constitutionality of a statute of a state at the suit of one who cannot be injuriously affected by such act. This attack is based upon discrimination. It is claimed there is a discrimination in favor of the banks and trust companies to the detriment of other corporations. There is no claim that the legislature would not have had power to prescribe the same rule as is prescribed in chapter 257, Acts of the 38th General Assembly, if that rule had been applicable to all corporations for pecuniary profit. Therefore we have a case where an official of a municipal subdivision of the State is attacking a statute of the State because of the claim that it discriminates against a class of tax payers, although no members of the class claimed to have been discriminated against is raising, or has raised, any objection to the validity of the statute.

This court, as well as the courts of many other states, has settled the rule that one who is not on his own account entitled to question

the constitutionality of a statute cannot object that it is unconstitutional as to others. (See cases cited in Brief Point II.)

In the case of City of Montgomery vs. Royal Exchange Assur. Corp., 59 Southern, 508, the Court of Appeals of Alabama had under consideration an attack upon the General Revenue Act of 1911, which imposed a privilege tax on fire insurance companies, differing in degree as applied to domestic and foreign companies. It
97 was held, that a municipality can-ot attac e validity of the act on the ground that it discriminates against foreign insurance companies, since it was not in the class discriminated against.

In City, etc. vs. McGovern, 152 Pac. 980, the Court of Appeals of California had under consideration the same subject and reached the same conclusion. Held: "The exemption of a partciular class or piece of property in no wise interferes with the raising of the necessary revenues on the remaining property in the county; it may to some extent increase the burden on this remaining property, but that is a matter of concern only to the property owners, and they are not parties to the action. The county government in the exercise of its function is not interfered with; its property is not affected for it is, under no circumstances, subject to taxation. Under what rule of procedure, then, can the county, itself not aggrieved, be heard to raise the federal question in the interest alone of some supposed taxpayer or class of taxpayers?"

To the same effect are the other cases cited in Brief Point II.

It would therefore seem in view of the former holdings of this court that the presumption as to the validity of state statutes will not be interfered with in this suit, and that appellants may not successfully assail the constitutionality of a state statute on the ground of discrimination.

But we have no hesitancy in proceeding with the discussion as to the validity of this statute, which is involved in paragraph III of appellee's propositions herein.

98 II.

It has long been settled in this jurisdiction that the legislature has the power to enact laws affecting given classes providing the distinction between classes is reasonable and not purely artificial and the statute is applicable to all who come within the limits of the classification. This statute on its face applies to all banks and trust companies. The legislature of this state and this court has repeatedly recognized the validity of classifications predicated upon business.

To illustrate, Section 1322 of the Iowa Code Supplement specifies the method of assessing the property and stock of banks and trust companies for the purposes of taxation. The same classification made here was made in section 1322, under which we reiterate the assessment was made in this case.

Section 1310 of the Iowa Code Supplement 1913 provides that the capital stock of all corporations, except banks and trust com-

panies, shall be taxed at five mills on actual value. The very exception in this statute makes the same classification involved in Chapter 257 under attack.

Section 1319 of the Iowa Code prescribes a method of assessing manufacturing corporations for the purpose of taxation, making the nature of the business engaged in as the basis of classification. So does Section 1315 of the Iowa Code concerning grain, ice and coal dealers, and as well section 1318 concerning corporations engaged in merchandising. Section 1333 of the Iowa Code Supplement prescribes the method of assessing Insurance Companies. All of these statutes drawing distinctions as classes predicated upon the nature of the business, as well as the corporate existence of the subject,
99 and yet none of the classes mentioned in these statutes are less arbitrary or artificial than the classification of banks and trust companies in Chapter 257 of the 38th General Assembly.

In Primghar State Bank vs. Rerick, 96 Iowa, 238, the court had under consideration a statute which provided that the "shares of the capital stock of banking associations organized under the general incorporation laws of the state, known as state or commercial banks, shall be assessed to such banks in the city or town wherein located." And in considering an attack against that statute on the same grounds asserted in this case said:

"It is not necessary to the validity of an act that it operate upon all persons in the state alike. It is sufficient if it be general and uniform in its operation upon all persons in like situation, and this is true whether individuals or corporations are affected. McAunich vs. Railroad Co., 20 Iowa, 343; Land Co. vs. Soper, 39 Iowa, 116. Nor is an act which prescribes a fixed and specific rule for the assessment of the property of one class of corporations or persons, different from that applicable to other classes, a special act, within the meaning of the constitution. Therefore, it has been held that an act which provided a specific rule for the assessment of express and telegraph companies operating and doing business within this state, different from that applicable to the assessment of other property, was not a special law. Express Co. vs. Ellyson, 28 Iowa, 374. And the same rule has been applied to the assessment of railway property. Central Iowa Ry. Co. vs. Board of Suprs., 67 Iowa, 199. We are of the opinion that the statute in question is general, not because it operates upon all persons within the state alike, but because it applies alike to all banking associations organized under the general incorporation laws of the state, known as 'state or commercial banks'."

So in Brady vs. Mattern, 125 Iowa, 158, a statute relating
100 to unincorporated associations, partnerships, or individuals, conducting and carrying on a business corresponding to the business authorized to be carried on by incorporated building and loan associations was upheld, the court saying:

"The concrete question here involved is whether the Legislature may prohibit one class, composed of unincorporated associations, partnerships, and individuals, from conducting the loan and build-

ing association business, which is permitted to another class, composed of artificial persons or corporations. It is to be noticed that there is no attempt to absolutely prohibit the carrying on of such business, and the cases involving the constitutional right to engage in a form of business activity not injurious to the public are not in point. The question is as to the right to discriminate between classes by way of regulation of the business. That such discrimination may be made, when based on a reasonable distinction, involving the public welfare, cannot be questioned; and if the distinction between classes is reasonable, and not purely artificial, and the statute is applicable to all who come within the limits of the classification, its constitutionality cannot be questioned. * * * The building and loan association business is to some extent analogous to the banking business, and, with reference to the latter, statutes limiting it to incorporated association have been upheld."

In Huston vs. City, 176 Iowa, 455, the court sustained the validity of a statute and ordinance concerning the licensing and regulating of what is known as Jitney Busses when such statute and ordinance did not apply to taxi-cabs and street railway.

In Hubbell vs. Higgins, 18 Iowa, 40, a statute relating to hotels, classified by the number of rooms, was sustained against a similar attack to that employed in this case.

The business of banking has long been recognized as a
101 proper subject of governmental regulation. Many laws have been passed and approved relating solely to the business of banking by corporations, laws which do not have the slightest application to the activities of corporations generally. Distinctions have been drawn for many years between the business of banking by corporations and by individuals and between banking corporations as such, and corporations generally. In view of this long course of legislative action evidenced by the statutes of this state, we cannot believe this court will hold that the classification involved in Chapter 257 of the 38th General Assembly is unreasonable or artificial, or such as infringes the provisions of the state constitution referred to.

Instead of Section 257 of the Session Laws of the 38th General Assembly being unconstitutional and void because discriminating in favor of banks, we insist that in fact that act only tends to remove a discrimination theretofore existing against banks and trust companies as a class. It will hardly be contended that the federal securities referred to in the hands of a private banker, although acquired by such bank from the assets of his banking institution, would be subject to taxation, both because of the specific prohibition contained in the acts of Congress authorizing the issuance of such securities, and of the general rules of comity which prohibit the taxation by sovereignty of the securities of another.

Therefore under the law as evidence- by Section 1321 of the Iowa Code, and the application of Section 1322 as contended for by appellants before the enactment of Chapter 257 of the Session Laws of the 38th General Assembly, private bankers might own and hold ever so

many federal securities which were completely exempt from
102 assessment and taxation; while incorporated banks and trust companies would be liable to assessment and taxation thereon, indirectly it is true.

Furthermore an examination of Section 1310 of the Supplement to the Iowa Code will disclose that corporation shares or stocks, excepting shares of stock in national, state or savings banks, and loan or trust companies, are taxed upon the uniform basis through the state of five mills on the dollar of actual valuation, whereas under sections 1321, 1322 and 1322-1-*a*, bank and trust companies are taxed at the full consolidated levy as applied to twenty per cent of the actual value thereof.

Thus it is seen that there existed as against banks and trust companies as a class a discrimination in favor of stocks in corporations generally and federal securities in the hands of private bankers, which in some measure is equalized or removed by the enactment of Chapter 257 of the Session Laws of the 38th General Assembly.

III.

We next desire to consider pragraph IV of appellee's propositions. The assessment in this case was predicated upon a statement furnished pursuant to the provisions of Section 1322 of the Supplement to the Code of Iowa. This statement, as will be seen by reference to that section, is required to contain all the matter provided for in Section 1321, while subdivision 4 of Section 1321 provides that the statement shall specify separately the actual value of bonds and stocks of every kind and shares of capital stock or joint stock of other corporations or companies held as an investment, or in any way repre-
103 senting assets, and the specific kinds and description thereof exempt from taxation.

In the case of First National Bank vs. Hayes, 171 N. W. 715, this court held that the Assessor was obliged to predicate his assessment upon such statement, and that such assessment must be based upon "the capital (not capital stock) to be computed from the statement furnished under section 1321, added to the surplus and undivided profits."

If the statutes are to be sustained as constitutional then clearly the capital, made the basis of the assessment, must be capital subject to taxation, as otherwise property specifically exempt would be subjected to taxation.

IV.

And this leads us to a consideration of Paragraph V of Appellee's Propositions, that is:

By the method pursued the assessment in this case is against the property of appellee bank and therefore subjects to taxation bonds issued by the United States Government in contravention of the Constitution and Laws of the United States in so far as the assessment is comprised of the value of federal securities owned and held.

The court will have observed from the provisions of Section 1322

of the Code Supplement that the officers of the bank are required in each year to submit to the assessor a statement containing the information provided in Section 1321 of the Code Supplement, and said statement "shall show separately the amount of the capital stock and the surplus and the undivided earnings, and the Assessor from such statement shall fix the value of such stock
104 based upon the capital, surplus and undivided earnings." There is a provision for the deduction of the amount of the value of the real estate of said corporation, and a further provision "and the property of such corporation shall not be otherwise assessed."

Bearing these questions in mind we desire to present for the court's consideration the following propositions:

(*a*) In the construction of a statute of the character herein involved, the court will look through the form to the substance of the transaction.

(*b*) The statute omits essential factors of the value of the stock, thereby showing that it is not the actual value of the shares of stock as personal property which is sought to be assessed, but the physical property of the corporation as such.

(*c*) The provision that the property of the Bank shall not be otherwise assessed, shows that it was the intention of the Legislature to assess the property of the Bank by the method prescribed.

(*d*) The method of assessment must be construed as in practical effect an assessment of the corporation, or its property, or section 1322 of the Code of Iowa is unconstitutional and void as contravening the provisions of Section 2, of Article 8 of the Constitution of Iowa, hereinbefore referred to.

(*a*)

While it is provided in Section 1322 of the Code Supplement that "shares of stock" of certain banks shall be assessed, the mere denomination in the statute of "shares of stock" is not necessarily controlling in this court in this cause.

As said by the Supreme Court of the United States in C. O. & G. Co. vs. Harrison, 235 U. S. 292, "neither state courts, nor legislature, by giving a tax a particular name, or by the use of some form of words, can take away our duty to consider its real nature and effect."

105 To the same effect see G. H. & S. A. R. Co. vs. Texas, 210 U. S. 217.

In Home Insurance Company vs. New York, 134 U. S. 594, it is said:

"As held in McCulloch vs. Maryland, 4 Wheat. 436, the states have no power by taxation to impede, burden or in any manner control the operation of the Constitution and laws enacted by Congress to carry into execution the powers vested in the general government,

a doctrine which, applied in Weston vs. Charleston, 2 Pet. 449, annulled a tax levied by the authority of a law of South Carolina on stock issued for loans to the United States. Nor can this inhibition upon the States be evaded by any change in the mode or form of the taxation provided the same result is effected—that is, an impediment is thereby interposed to the exercise of a power of the United States. That which cannot be accomplished directly cannot be accomplished indirectly. Through all such *ditempts* the court will look to the end sought to be reached, and if that would trench upon a power of the government, the law creating it will be set aside or its enforcement restrained."

In Home Savings Bank vs. Des Moines, 205 U. S. 503, the court had under consideration Section 1322 of the Iowa Code prior to its amendment, wherein it was provided: "Shares of stock" of State and Savings Banks, etc. shall be assessed to such banks. In declaring the duty of the court with respect to a construction of such law it is said:

"The first step useful in the solution of this question is to ascertain with precision the nature of the tax in controversy and, upon what property it was levied, and that step must be taken by an examination of the taxing law as interpreted by the Supreme Court of the State. A superficial reading of the law would lead to the conclusion that the tax authorized by it is a tax upon the shares of stock. The assessment is expressed to be upon shares of
106 stock of state and savings banks, and loan and trust companies. But the true interpretation of the law cannot rest upon a single phrase in it. All its parts must be considered in the manner pursued by this court in New Orleans vs. Houston, 119 U. S. 265, 30 L. Ed. 411, and Home Ins. Co. vs. New York, 134 U. S. 594, with the view of determining the end accomplished by the taxation, and its actual and substantial purpose and effect. We must inquire whether the law really imposes a tax upon the shares of stock as the property of their owners, or merely adopts the value of those shares as the measure of valuation of the property of the corporation, and by that standard taxes that property itself."

Neither will the contention that the tax is the equivalent of a tax which is within the power of the State to lay suffice to sustain a tax which in practical effect contravenes the provisions of the Federal Constitution and laws. Thus in this case, although the State may have the authority to tax the shares of stock as the personal property of individuals, a tax which in practicaly effect is laid against the tangible property of the corporation cannot be sustained, for it is not what the State might do, but what the State by its law has done that controls in the construction of the statute.

See Owensboro Nat. Bank vs. Owensboro, 173 U. S. 664;
Home Savings Bank vs. Des Moines, 205 U. S. at 519.

Since the true interpretation of the law cannot rest upon a single phrase in it, let us examine the further provisions having to do with the tax or assessment involved in this case.

107 (*b* and *c*.)

We have heretofore called the court's attention to the provisions of Section 1322, but at the expense of repetition we desire to point out in this connection certain of the specific provisions thereof. First, at the time of the assessment it is made the duty of the corporation to furnish the assessor a verified statement of the matter provided in Section 1321 of the Code Supplement. A reference to this section discloses that there is required to be shown in the statement (1) the amount of moneys, checks and other cash items owned by the bank; (2) the actual value of credits, bills receivable and the like, accruing to the Bank; (3) the amount of deposits and bills payable of the bank; (4) the actual value of bonds and stocks of every kind held as an investment, or in any way representing assets, and the specific kinds and description thereof exempt from taxation; (5) all other property pertaining to said business. It is next provided that such statement shall show the amount of capital stock and the surplus and undivided earnings of the corporation, and "the assessor from such statement shall fix the value or such stock based upon the capital, surplus and undivided earnings." There is a provision for the deduction of the value of the real estate of such corporation, and a further provision "and the property of such corporation shall not be otherwise assessed."

It will be noted from these provisions of the statute that the amount of the assessment is required to be based upon three elements, that is to say, capital, surplus and undivided earnings. These three elements represent the tangible property of the corporation as such. There is no provision for a consideration of the value of the franchise of the corporation, the going concern value of the
108 corporation, the good will value of the corporation, or any other intangible element, which are all essential factors of the value of the shares of stock as such. It will further be noted there is no provision for the ascertainment of the market value of the shares of stock as represented by sales or otherwise. On the contrary, the assessment as such is made upon the whole of the tangible property of the corporation. In other words, the amount of the assessment is fixed by this tangible property, and no consideration is authorized to be given to any of the other elements of value of the shares of stock. This, it seems to us, demonstrates that the assessment and consequent tax is in reality laid upon the property of the corporation.

There can be no question that the very location of a banking institution may give added value to the shares of stock, for there could be institutions owning tangible property of equal value, one of which was located in the heart of a business section, convenient to its patrons, and the other located in a remote place, and yet the value of the shares of stock in the one would not be of necessity the equivalent of the value of the shares in the other. Furthermore, a bank which has been established for many years, and has the benefit of a satisfied patronage, as well as a reputation for fair and sound dealings, has by reason of its own business, and of the other facts enumerated,

a value over and above the actual cash value of its tangible assets, and this value is reflected directly in the shares of stock whenever they are offered for sale.

By way of illustration let us assume a banking corporation organized with a capital stock of $100,000.00 which has been engaged in business for ten years, during which period of time it has
109 earned a surplus of $50,000.00, thereby making its capital and surplus on January 1st, 1919, $150,000.00. Let us also assume that on December 31st, 1918, a banking corporation was formed with a capital stock of $100,000.00 and a paid in surplus of $50,000.00, thereby making its total capital stock and surplus on January 1st, 1919, $150,000.00, or the equal of the institution which had been in business for ten years and has earned its surplus. Can it be in reason said that the capital stock and surplus in these two instances fairly measures, or is intended to measure, the value of the shares of stock in the two banks? One of such banks would have by its course of dealing established itself as a sound financial institution, surrounding itself with patrons probably at great expense and built up a business which reflected the value of its shares to the owners thereof, while the other might not have a dollar of deposits and might not have conducted a single business transaction, nor have a single patron, and yet the value of the shares of its stock would be, according to the construction of this statute as contended for by appellants, equal to that of the established banking business.

The Supreme Court in the case of Home Savings Bank vs. Des Moines, supra, called particular attention to the failure of the statute of the State of Iowa to include these elements within its terms, and relied thereon as an argument sustaining its conclusion that the tax imposed by that statute prior to its amendment was against the corporate property, and not against the shares of stock. It is therein said:

"The fair interpretation of the law is that the taxes are upon the property of the banks. In the valuation for taxation the assessor is required to 'take into account the capital, surplus, and un-
110 divided earnings,' must be furnished with 'a verified statement of all matters provided by the preceding section,' which, by reference, is seen to be a detailed statement showing the assets of the bank. It is true that the assessor may resort to 'other information he can obtain,' but, although capital, surplus, and undivided earnings are expressly named, nothing is said of the franchise and good will, essential factors of the value of the shares, though not of the value of the assets of the bank. See People ex rel. Union Trust Co. vs. Coleman, 126 N. Y. 433, 12 L. R. A. 762, 27 N. E. 818. Moreover, the section closes with the words, 'and the property of such corporation shall not be otherwise assessed,' which plainly implies that the assessment already provided for is, in substance, an assessment upon the property of the corporation. That the law was administered upon the theory that the tax was upon the property of the corporation is signally illustrated by the proceedings in these cases. The valuation was first made on the exact figures of the capital, surplus, and undivided earnings, deducting the holdings of

United States Securities. Then, upon being advised that the deduction was erroneous, the assessor corrected the valuation by adding the value of the securities deducted. We therefore conclude that the substantial effect of the law is to require taxation upon the property, not including the franchise, of the banks, and that the value of the shares, ascertained in a manner appropriate to determine the value of the assets, is only the standard or measure by which the taxable valuation of that property is determined."

It is true that the statute then under consideration by the court has been amended by changing the phrase, providing for the assessment of the shares of stock to the bank, to a provision for the assessment of the shares of stock to the individual stockholders, but each of the reasons just hereinbefore stated as moving the Supreme Court to declare the tax in that case one upon corporate property still exist.

Indeed, under the law as amended, the assessor is not author-
111 ized to resort to "other information he can obtain," as was the case before the amendment, but he is expressly limited to the tangible assets of the corporation in fixing the assessment.

First Nat. Bank vs. Hayes, 171 N. W. 715.

Therefore, the real effect of the law is to go into the internal affairs of the corporation as such, and pick out three elements of tangible property, and lay a tax upon the aggregate amount of the value of these three elements of tangible property. True, it is called in the one phrase a tax on the shares of stock, but the mere denomination of the tax as such, as we have hereinbefore pointed out, cannot, it seems to us, avoid the fact that under the provisions of the statute the tax is imposed on corporate property.

In New Orleans vs. Houston, 119 U. S. 265, the court said:

"It is well settled by the decisions of this court that the property of shareholders in their shares, and the property of the corporation in its capital stock, are distinct property interests, and, where that is the legislative intent clearly expressed, that both may be taxed. (Citing cases.)

In Tennessee vs. Whitworth, 117 U. S. 129, the Chief Justice delivering the opinion of the court said: 'In corporations four elements of taxable value are sometimes found: (1) franchise; (2) capital stock in the hands of the corporation; (3) corporate property; and (4) shares of the capital stock in the hands of the individual stockholders. Each of these is, under some circumstances, an appropriate subject of taxation; and it is no doubt within the power of a State, when not restrained by constitutional limitations, to assess taxes upon them in a way to subject the corporation or the stockholders to double taxation. Double taxation is, however, never to be presumed. Justice requires that the burdens of government shall, as far as is practicable, be laid equally on all, and if
112 property is taxed once in one way, it would ordinarily be wrong to tax it again in another way, when the burden of both taxes fall- on the same person. Sometimes tax laws have that effect; but if they do, it is because the Legislature has mistakenly so enacted. All presumptions are against such an imposition.' But

the question of legislative intent is always open upon the language of the exemption. In the present case the corporation is exempt by its charter from all other taxes and licenses of any kind whatever in excess of the sum of $40,000 per annum, and yet by Act No. 77, though the assessment is not to be made upon its capital stock, but upon the shares of shareholders, appearing upon its books, nevertheless, the tax so assessed is to be paid by the Company, although it is entitled to collect the amount so paid from the shareholder on whose account it is payable; but this payment by the Company is to be made irrespective of any dividends or profits payable to the shareholder out of which it might be repaid. That it is substantially a tax upon the corporation itself, is unequivocally shown by the subsequent clause — authorizes a deduction from the amount of taxes assessed to each share of its proportion of the direct property taxes paid by the Company as such under Sections 1 and 3, and of all exempt property belonging to the corporation. * * * Indeed, it is quite apparent from the language of the whole section, that, while nominally the taxes authorized are not to be assessed upon the capital stock of the corporation in the aggregate and as its property, yet in substance that is its effect. The taxes are assessed upon the actual shares as registered in the names of individual shareholders but are to be paid by the corporation, so that while the form and mode of taxation is changed, its substance remains as though assessed against the Corporation by name."

How very applicable is this language of the Supreme Court to the facts disclosed in the present case. It is true that while the tax charged under Section 1322 is required to be paid by the corporation under the penalties prescribed, such corporation has a
113 right of action over against the stockholders, just as was true in the case of New Orleans vs. Houston, but neither the denomination of the tax as against shares of stock, nor the subsequent investment of a right of action to recover the amount paid can change the fact that the assessment is of the tangible property of the corporation.

Suppose that the shares of stock in this bank were in great demand in the market, at a price of five for one, and suppose that that market price was actually supported by the value of the corporate property, and the value of a franchise, and good will, could it be said that the assessment, based upon the value of its tangible property representing one-half of this amount, was in reality an assessment of the value of the shares of stock. It seems to us that the question affords its own answer.

It has not infrequently been the duty of the courts to declare taxes, laid by virtue of state laws, void when subjected to the proper tests of construction.

In Brown vs. Maryland, 12 Wheat. 419, it was held, that to tax the occupation of an importer was to tax the property imported.

In Weston vs. Charleston, 2 Pet. 449, it was held that to tax the income of United States Securities is to tax the securities themselves.

In Dobbins vs. Erie County, 16 Pet. 435, it was held, that to tax an income from an official position is to tax the office itself.

In Almy vs. California, 24 How. 169, it was held that to tax a bill of lading is to tax the thing transported and the receipts therefrom.

In Northern C. R. Co. vs. Jackson, 7 Wall. 262, it was held that a tax upon the interest is a tax upon the bond.

In Cook vs. Pennsylvania, 97 U. S. 566, it is held that a tax upon the auctioneer is a tax upon the goods sold.

114 In Pollock vs. Farmers L. & T. Co., 157 U. S. 429, it is held that to tax the income of personal property and the rental of lands is to tax the property from which the income is returned.

In G. H. & S. A. vs. Texas, 210 U. S. 217, it is held that to tax the gross receipts of a Railway Company, derived from the carriage of passengers and freight in Interstate Commerce, is to tax Interstate Commerce.

In C. O. & G. vs. Harrison, 235 U. S. 292, it is held that a tax on gross production of coal is not a tax upon personal property consisting of coal at the mouth of the mine, but upon the right to engage in the business of mining.

All of these cases demonstrate that where the provisions of the law are subjected to the test declared by the decisions of the Supreme Court, the tax is not what it superficially appears to be, but that it is the actual practical effect of the imposition which controls in the determination of its validity or invalidity in the light of constitutional provisions.

It is true that where there is a doubt the Legislature of a state is presumed to have intended to enact a valid law, and such a contention was expressly made in all of these cases which are just hereinbefore referred to, but this presumption cannot prevail when the result of the imposition is shown to have been other than is authorized by the Constitution and laws.

It is earnestly insisted that in the light of these authorities, the practical effect of this law is to tax the property of the Bank as such, including bonds of the United States Government to the extent stated, and therefore, that such a tax is, because of the Constitution of the United States, and the provisions of the Federal laws, invalid.

115 (*d.*)

That such is the effect of this law is demonstrated by the decision of the Iowa Supreme Court in the case of "In the Stock Yards Company, 149 Iowa, page 5." In that case the assessor had returned an assessment against the Sioux City Stock Yards Company, a corporation, under the provisions of Section 1318 of the Iowa Code. By this section a corporation engaged in the business of merchandising is assessed at the average value of the stock of merchandise held by the corporation during the year, and it is provided that such a tax shall be in lieu of any tax on the shares

of stock of the corporation. Objections to this assessment were made before the Board of Review by a Tax ferret, who insisted that the assessment in the case should be upon the shares of stock of the individual stockholders under the provisions of Section 1323 of the Iowa Code, but this contention was ignored by the Board of Review, and the assessment reported by the Assessor was confirmed. Thereupon the objectors took an appeal to the District Court under the terms of Section 1373 of the Iowa Code. On the hearing of this appeal before the District Court it was contended that the court — without jurisdiction to make an assessment against the individual stockholders, for the reason that no assessment had theretofore been returned against them, and consequently there was nothing from which an appeal could be prosecuted. The court said:

"But the point made for the appellee on the interpretation of the statute is that it does not authorize a new assessment against stockholders where the assessor and Board of Review have as-essed
116 the property to the corporation itself as a merchant. This point we think is not well taken. The assessment to the stockholders on the value of their shares of stock is in practical effect an assessment on the corporation. The valuation of the property in either case is on the same basis, and whether the taxes paid by the corporation are levied against it on its own property or as representative of the stockholders from whom the corporation is authorized to collect it is as it seems to us quite immaterial. In either event, the corporation must pay the tax. If as a result of an assessment made on shares of stock the total amount of taxes to be paid by the corporation is greater than that assessed against it directly by the assessor and board of review, then the tax is increased. * * * The result of the taxation by assessment to the stockholders on the value of their shares of stock would be to increase the taxes to be paid on account of the property of the corporation and the amount of such taxes would still be payable by the corporation."

How can it be said, in view of this construction of a statute of Iowa involving the same questions as here presented, that the assessment is other than against the property of the corporation? In that case it was jurisdictional that the appeal should have been from an assessment of the parties. In order to avoid this very question the court holds that there is no difference in the effect of the taxation, so that an original assessment against the corporation would sustain an increased and new assessment against the individual stockholders, because the tax is in either instance in practical effect upon the property of the corporation.

So in Iowa Loan & Trust Company vs. Fairweather, et al., 252 Fed. 605, in speaking to the same question Wade, District Judge, said:

"But returning to the Iowa statutes: Under these statutes, what is taxed? What is taxed in any case? Not the thing, but the
117 value of the thing. A tax is assessed against the owner of property, but the tax is based upon, not the property, but

the value of the property. A bond may be worth $100 one year, and $50 the next year. The tax is laid each year upon the value at that particular time.

So when the Iowa statute provides that shares of stock shall be assessed to the individual stockholder, and that the value to be assessed shall be measured by the property owned by the bank, the thing assessed is the value of the property of the bank (including these bonds). Here is a scheme for compelling the value of certain property to bear its just share of taxation. What is the property? Money, notes, bonds, accounts—held, it is true, not directly by individuals, but by a corporation, an agency employed by individuals. It happens that in this particular agency the interest of each individual is represented by a share or shares called 'stock.' The fact that stock is issued to each does not affect the ownership (indirect) of each in the value of the aggregate property. If the parties held the same property for the same purposes, and conducted the same business without incorporation, the interest of each in the aggregate property would be the same; the shareholders in the corporation having the advantage over the partners in the partnership of exemption, complete or limited, from liability for corporate debts; but for taxing purposes, under the rule of equality of burdens (so far as practicable) what difference is there?

The policy of Iowa as to corporations has been not to attempt to levy a tax upon the stock and also upon the property of a corporation. This has been done in some states, and sustained, though confessed to be in the nature of double taxation. At times Iowa has taxed the shares of stock and exempted the corporation, and at times the reverse; but whichever method is employed, can there be any question as to what in fact furnished the basis of the tax? In each case it is the value of the property of the corporation, or the value of that portion of the property designated upon which the tax is laid. Under the Iowa statute held void by the Supreme Court of the United States exactly the same thing furnished the value for taxation which is made the basis of taxation in this case. This is not a case
118 where the statute requires the assessor to assess the market value of stock—the specific things which he must use as the basis of value are fixed by the Legislature.

Not only this, but it affirmatively appears upon the record, as required by the statute, that the value thus to be fixed includes the value of the exempt Liberty Bonds. The statute requires the bank, in making its report, to include in its statement 'the specific kinds and description thereof (stocks and bonds) exempt from taxation.' What does this provision mean? It might possibly be construed as providing for a deduction of this exempt property; but, in any event, it clearly shows that when the assessor made the assessment he affirmatively took into consideration, as a basis of taxing value, the very bonds which Congress emphatically declares shall not be subject to general taxation by any state.

Not only this, but under the statute 'the property of such corporation (the bank in this case) shall not be otherwise assessed.' This provision of the statute cannot be sustained except upon the theory

that the assessment provided for nominally against the shareholders, is in truth a tax upon the property of the corporation.

What power has the Legislature to exempt the property of the bank from taxation in view of the plain provision of the Constitution of Iowa? Section 2, Art. 8:

'The property of all corporations for pecuniary profit shall be subject to taxation the same as that of individuals.'

In the case of Hawkeye Insurance Co. vs. French, 109 Iowa, at 588, 80 N. W. 660, the Supreme Court of Iowa said:

'Reduced to its last analysis, the question is a narrow one, and must find its solution in the construction of the constitutional provision relied upon by appellee. That provision not only requires that the property of corporations be taxed, but that it be subject to taxation the same as that of individuals. This does not mean, of course, that the methods should be identical, but that the property of corporations organized for pecuniary profit should assume the same burdens as are placed upon the property of individuals, and that the taxes should be for the same purposes and objects. It will not do to say that the constitutional provision is a mere grant
119 of power to the Legislature to impose taxes on corporate property. That power would exist in the absence of any constitutional grant. Indeed, it is fundamental that a state Constitution is not a grant of power, but a limitation upon the powers of government.'

Only by construing the assessment in this case as in effect being an assessment upon 'the property' of this corporation can the legislation be sustained as constitutional. I cannot assume that the intention of the Legislature was to violate this provision of the Constitution. The unity of the property of the corporation and the property of the shareholders as a basis of taxation can not be evaded; it is the same thing."

Moreover the court will bear in mind that the assessment involved in this case purports to be laid against the shares of stock in a National Bank. Admittedly neither the property of the National Bank nor the shares of stock therein is a proper subject of taxation by the State without consent of the Federal Government because the National Banks are creatures of the Federal Government, and are in fact federal instrumentalities. It is an elementary rule that federal instrumentalities are not subject to taxation by the States without consent of the Federal Government. As we have pointed out, this consent, if it exists, is to be found in the provisions of Section 5219 of the Compiled Statutes of the United States, and this consent must be considered in the light of the construction placed thereon by the Supreme Court of the United States.

Indeed appellants assert that the construction of the Supreme Court of the United States of this section of the Revised Statutes as appears in the case of Van Allen vs. Assessors, 3 Wallace, 573, justifies the assessment by the method attempted in this instance.

Of course the Congress could have consented to the taxation of

the property of the National Bank as such just as readily as
120 it could have granted consent to tax the shares of stock in such a federal agency.

Now what was the consent granted by Section 5219 of the Revised Statutes in so far as this consent relates to the laying of taxes against National Banks, or an interest therein? The answer to this interrogation is found in the recent case of Bank of California vs. Richardson, 63 L. Ed. p. 212, wherein the court said:

"It is undoubted that the statute, from the purely legal point of view, with the object of protecting the Federal corporate agencies which it created from state burdens, and securing the continued existence of such agencies despite the changing incidents of stock ownership, treated the banking corporations and their stockholders as different. But it is also undoubted that the statute for the purpose of preserving the state power of taxation, considering the subject from the point of view of ultimate beneficial interest, treated the stock interest, that is, the stockholder, and the bank, as one, and subject to one taxation by the methods which it provided."

This case when subjected to an analysis sustains the contention now advanced that the tax involved in the present appeal is really a charge upon the tangible assets of the bank from which the value of the Federal securities should be deducted. That case arose from the assessment against the stockholders of the Bank of California, National Association, in which assessment was included an item of $625,546.30, representing the value of 2,501 shares of the D. O. Mills National Bank which were owned by the Bank of California, National Association. Under the authority of Bank of Redemption vs. Boston, 125 U. S. 60, the Bank of California was assessed as a stockholder in the D. O. Mills National Bank, to the extent of its stock interest. Thereafter, the stockholders of the Bank
121 of California were assessed, and included in the aggregate of the assets of the Bank of California, upon which such assessment was based, was the value of the stock which it owned in the Mills Bank. The court held that under Section 5219 of the Revised Statutes it was proper for the state authorities to tax the Bank of California on account of its ownership of stock in the Mills Bank, but that such assessment exhausted the power of the State with respect to any tax on that property. In other words, it is only by virtue of the consent of Congress that the shares in a National Bank, a Federal agency, may be taxed at all, and, the state having taxed to the Bank of California an amount on account of its ownership of shares in the Mills National Bank had exhausted all power with respect to those shares and thereafter could not tax the shares in the Bank of California where the value of such latter shares was made up of the stock owned by that institution in the Mills National Bank. Stated otherwise, so far as the taxation of the shareholders of the Bank of California was concerned, the shares owned by it in the Mills National Bank were in the same situation as if Congress had never granted the power to the state to assess it at all. The contention was raised that the taxation in each instance was valid be-

cause a taxation of different persons, the Bank of California as an entity on the one hand, and the stockholders of the Bank of California as individuals on the other, but the court in denying this contention held that for the purpose of preserving the state power of taxation, the statute of Congress considered the subject from the point of view of ultimate beneficial interest, that is, it treated the stock interest, the stockholders, and the bank as one.

Now let us apply this holding to the situation at hand.
122 The effort to tax the shares of stock owned by individuals in the Bank of California, National Association, was overruled, because that assessment included as a part of the value of such shares the assets of the Bank of California, National Association, consisting, among other things, of shares of stock in the Mills National Bank. The shares of stock in the latter bank could only be assessed by virtue of Section 5219 of the Revised Statutes, and such assessment having been made to the individual holders of the shares in the Mills National Bank including the Bank of California, National Association, as an individual, the power to consider such property as an element in further assessing the shares of the Bank of California, a National Association, was denied. In other words, the consent to assess the shares of Mills National Bank, a Federal instrumentality, having been employed, such shares were immune from consideration in attempting to fix any other assessment even as against the stockholders in the Bank of California, National Association.

To state it again, the consent of Congress to assess the shares of stock of the Mills National Bank, a Federal agency, having been utilized, those shares were thereafter in exactly the same situation as any interest in any other federal agency, the consent to tax which had not been granted.

Now in this case the assets, comprising the value upon which the assessment is based, consisted of Federal securities, as to which no consent to tax has been given, just as in the Bank of California case the assets consisted of shares in a Federal agency, the consent to tax which had been exhausted and thereby withdrawn.

It will not do to say that that case was grounded upon a
123 double or second taxation of the same value, because the Supreme Court in the course of the opinion says:

"We do not stop to point out the double burden resulting from the taxation of the same value twice which the assessment manifested, as to do so could add no cogency to the violation of the one power to tax by the one prescribed method conferred by the statute, and which was the sole measure of the state authority."

There was just as great a distinction between the property owned by the Bank of California, National Association, although such property was shares in a National Bank, and the stock owned by the shareholders of the Bank of California, National Association, as there is in this case between the Federal securities owned by the Des Moines National Bank and the stock owned by its shareholders. There was just as great a difference of property right. Every single argument advanced by appellee in this case was equally applicable in that case,

and apparently was made, and yet the court denied the right to tax those shares where the value was made of an interest in a Federal agency. We say, the arguments advanced here were there advanced, and this is apparent from the dissenting opinion filed in that case where Van Allen vs. Assessors, Supra, and the other cases of like tenor were cited in support of the dissent, but regardless of the existence of those cases, the court held to the rule for which we are contending, and this is the last expression of the Supreme Court of the United States on the subject. This court knows, as a matter of practice, that it is a rare thing that cases in the Supreme Court of the United States are directly overruled, and yet frequently rules announced by such cases are so modified by later opinions as in practical effect the former decisions are withdrawn.

124 We therefore insist that clearly in this case, as is shown by the holding of the Supreme Court of the United States in the case last referred to, the tax here is upon the property, the interest in the assets of the bank, and that property is immune from taxation because of the express provisions of the acts authorizing the federal issues, and because of the general rules of law.

In this connection we earnestly commend to the court's consideration the very able opinion of Wade, District Judge, in the case of Iowa Loan & Trust Company vs. Fairweather, et al., 252 Fed. page 605.

V.

The points involved in appellee's Proposition VI fall into the same category, and we will consider them together.

Assuming now for the purpose of this argument, but not conceding the fact, that the assessment is laid against the shares of stock of the bank in the hands of the individual owners thereof, under the allegations of the petition, which are admitted by the demurrer, the assessment is based to the extent stated in the petition on a value arising from the ownership of federal securities. It is because of the inclusion in the assessment of this element of value that we claim the assessment to be void, because it contravenes the provisions of Section 5219 of the Revised Statutes. With this section of the Revised Statutes the court is no doubt familiar, and the contention just asserted arises from a consideration of the first restriction on the power of the State, or its subdivisions, to tax shares of stock in a National Bank as contained in said section which is as follows:

125 "That the taxation shall not be at a greater rate than is assessed upon other moneyed capital in the hands of individual citizens of such State."

The particular violation of this provision of the Federal Act, upon which reliance is placed by appellee arises from the fact that under the laws of the State of Iowa, persons designated as private bankers are engaged in the banking business in competition with appellee, and that the method of taxation of such private bankers as prescribed by the state statutes precludes the assessment for taxation of the value of federal securities in their hands.

There are allegations of fact contained in the petition that at the time of this assessment there were in Polk County, Iowa, and within the City of Des Moines, at least four such private bankers whose business was the receiving of deposits subject to check, on certificates, receipts, or otherwise, or the selling of exchange, or the conducting of a banking business in competition with appellee. As we have heretofore pointed out, all of the assessments of property for persons made by the Assessors, were pursuant to law, placed before the Board of Review. From the assessment of at least some, if not all of these private bankers, it is disclosed that they possessed Liberty Bonds on the first day of January, 1919.

From the provisions of section- 1321 and 1322 of the Code Supplement it will be observed that the assessment of National Banks, and also private banks, is rested primarily upon a statement properly verified, required by the statute to be furnished by the property owner to the Assessor, and each of the statements under the terms of the statutes, is required to contain the same information. From this fact we claim that there is a recognition by the very terms of
126 the laws of the similarity of the business in which the two classes of property owners are engaged. By subdivision four of Section 1321 the statement is required to contain the actual value of bonds held and the specified kinds and description thereof exempt from taxation.

The provisions of the acts of Congress under which the securities involved in this case were issued, and of which this court will take judicial knowledge, but which for the convenience of the court are set forth in the petition in this case, provide that the principal and interest of such bonds shall be exempt from all taxation except estate or inheritance taxes imposed by authority of the United States, or its possession, or by any state or local taxing authority.

Of course this provision, speaking generally, is but a declaration of law, for it has long been settled for reasons of public policy that the securities of the general government as such, may not be subjected to taxation by virtue of State authority. Therefore, it necessarily follows that these federal securities in the hands of individuals engaged in business as private bankers could not be subjected to taxation by the State or its political subdivision, and from this fact it is claimed by the petition there results a discrimination in violation of the restriction imposed upon the authority to lay the taxes by the terms of Section 5219 hereinbefore referred to.

If we can demonstrate to the court that under the general scheme of taxation, existing by virtue of the express statutes of the State of Iowa, such a discrimination results, then it seems to us we will have shown that the petition properly stated a case, and that the demurrer was properly overruled.

There are two phases of the question which probably will
127 require discussion for a correct solution. The first is involved in the claim that a difference in the method of assessment or valuation of property for purpose of taxation will violate the terms of this restriction just the same as a different rate of levy would do when applied to the ascertained value of property. And the second

arises from a correct understanding of the term "other moneyed capital in the hands of individual citizens of the state" as contained in the restriction referred to.

In the case of Head vs. Board of Review, 170 Iowa, 300 at page 306, this court, following the decision of the Supreme Court of the United States in People vs. Weaver, 100 U. S. 539, said:

"A rate may be greater, not only owing to a higher percentage of the levy, but in consequence of some method of assessment or taxation, which would discriminate against National Banks unfavorably."

The decisions of this Court in Des Moines National Bank vs. Des Moines, 153 Iowa, 336, and National Bank vs. City Council, 150 Iowa, 95, are necessarily rested upon the same conclusion.

In Boyer vs. Boyer, 113 U. S. 689, the court said:

"But the Act of 1864 was so far modified by that of February 10, 1868, that the validity of such state taxation was thereafter to be determined by the inquiry, whether it was at a greater rate than was assessed upon other moneyed capital in the hands of individual citizens, and not necessarily by a comparison with the particular rate imposed upon shares in state banks. The effect, if not the object of the latter Act was to preclude the possibility of any such interpretation of the Act of Congress as would justify states, while imposing the same taxation upon national bank shares as upon shares in state banks, from discriminating against national bank shares, in favor of moneyed capital not invested in State
128 bank stock. At any rate, the Acts of Congress do not now permit any such discrimination."

In People, ex rel. Williams vs. Weaver, 100 U. S. 539, it is said:

"This provision of the national bank law, that state taxation on the shares of the bank shall not be at a greater rate than is assessed on other moneyed capital in the hands of citizens of the state, has reference to the entire process of assessment and includes the valuation of the shares as well as the ratio of percentage charged on such valuation. A statute of a state, therefore, which establishes a mode of assessment by which the shares of the national banks are valued higher, in proportion to their real value, than other moneyed capital is in conflict with the Act of Congress, though no greater percentage is levied on that valuation than on the valuation of other moneyed capital."

To the same effect are the decisions of the Supreme Court of the United States in the following cases:

Supervisors vs. Stanley, 105 U. S. 305, 26 L. Ed. 1044;
Hills vs. Exchange Bank, 105 U. S. 319, 26 L. Ed. 1052;
Evansville Bank vs. Briton, 105 U. S. 322, 26 L. Ed. 1053;
Cummings vs. National Bank, 101 U. S. 153, 25 L. Ed. 903;
American Nat. Bank vs. New York, 121 U. S. 138;

Pelton vs. Com'l Nat. Bank, 101 U. S. 143, 25 L. Ed. 901;
Stanley vs. Albany County, 121 U. S. 535, 30 L. Ed. 1000;
McHenry vs. Downers, (Calif.) 45 L. R. A. 737.

In view therefore of these unequivocal pronouncements by both the Supreme Court of the United States and this Court we
129 take it as established beyond question that if there is a difference in the method of assessment of the value of the shares of stock in national banks when compared to the assessment of moneyed capital in the hands of individuals, and such difference discriminates against the shares of stock in the national banks, there results a violation of the terms of the federal statute referred to.

So that we proceed to a consideration of the other question in this case, and that is, what is meant by the term "other moneyed capital in the hands of individuals"? This question has been frequently before the courts both state and federal so that there really ought to be little, if any difficulty presented thereby in this case.

The most exhaustive consideration of the question is contained in the decision of the Supreme Court in the case of Mercantile Nat. Bank vs. Mayor, etc., 121 U. S. 138, 30 L. Ed. 895, where the court after carefully reviewing all of the authorities theretofore rendered on the subject said:

"The key to the proper interpretation of the Act of Congress is its policy and purpose. The object of the law was to establish a system of national banking institutions, in order to provide a uniform and secure currency for the people and to facilitate the operation of the Treasury of the United States. The capital of each of the banks in this system was to be furnished entirely by private individuals; but, for the protection of the government and the people, it was required that this capital so far as it was the security for its circulating notes, should be invested in the bonds of the United States. These bonds were not subjects of taxation; and neither the banks themselves, nor their capital, however invested, nor the shares of stock therein held by individuals, could be taxed by the States in which they were located without the consent of Congress, being
130 exempted from the power of the States in this respect, because these banks were means and agencies established by Congress in execution of the powers of the Government of the United States. It was deemed consistent, however, with these national uses, and otherwise expedient, to grant to the states the authority to tax them within the limits of a rule prescribed by the law. In fixing those limits it became necessary to prohibit the states from imposing such a burden as would prevent the capital of individuals from freely seeking investment in institutions which it was the express object of the law to establish and promote. The business of banking, including all the operations which distinguish it, might be carried on under state laws, either by corporations or private persons, and capital in the form of money might be invested and employed by individual citizens in many single and separate

operations forming substantial parts of the business of banking. A tax upon the money of individuals, invested in the form of shares of stock in national banks, would diminish their value as an investment and drive the capital so invested from this employment, if at the same time similar investments and similar employments under the authority of state laws were exempt from an equal burden. The main purpose, therefore, of Congress, in fixing limits to state taxation on investments in the shares of national banks, was to render it impossible for the state, in levying such a tax, to create and foster an unequal and unfriendly competition, by favoring institutions or individuals carrying on a similar business and operations and investments of a like character. The language of the Act of Congress is to be read in the light of this policy.

Applying this rule of construction we are led, in the first place, to consider the meaning of the words 'other moneyed capital', as used in the statute. Of course it includes shares in national banks; the use of the word 'other', requires that. If bank shares were not moneyed capital the word 'other' in this connection would be without significance. But 'moneyed capital' does not mean all capital the value of which is measured in terms of money. In this sense, all kinds of real and personal property would be embraced by it, for they all have an estimated value as the subjects of sale. Neither does it necessarily include all forms of investment in which
131 the interest of the owner is expressed in money. Shares of stock in railroad companies, mining companies, manufacturing companies, and other corporations, are represented by certificates showing that the owner is entitled to an interest, expressed in money value, in the entire capital and property of the corporation, but the property of the corporation which constitutes its invested capital may consist mainly of real and personal property, which in the hands of individuals, no one would think of calling moneyed capital and its business may not consist in any kind of dealing in money, or commercial representatives of money.

So far as the policy of the government in reference to national banks is concerned, it is indifferent how the states may choose to tax such corporations as those just mentioned, or the interest of individuals in them, or whether they should be taxed at all. Whether property interests in railroads, in manufacturing enterprises, in mining investments, and others of that description, are taxed or exempt from taxation, in the contemplation of the law, would have no effect upon the success of national banks. There is no reason, therefore, to suppose that Congress intended, in respect to these matters, to interfere with the power and policy of the States. The business of banking, as defined by law and custom, consists in the issue of notes payable on demand, intended to circulate as money where the banks are banks of issue; in receiving deposits payable on demand; in discounting commercial paper; making loans of money on collateral security; buying and selling bills of exchange; negotiating loans, and dealing in negotiable securities issued by the government, state and national and municipal and other corporations. These are the operations in which the capital invested in national banks is em-

ployed, and it is the nature of that employment which constitutes in the eye of this statute 'moneyed capital.' Corporations and individuals carrying on these operations do come into competition with the business of national banks and capital in the hands of individuals thus employed is what is intended to be described by the Act of Congress. That the words of the law must be so limited appears from another consideration; they do not embrace any moneyed capital in the sense just defined, except that in the hands of individual citizens. This excludes moneyed capital in the hands of corporations, although the business of some corporations may be such as to make the shares therein belonging to individuals moneyed capital in their hands, as in the case of banks. A railroad company, a mining company, an insurance company, or any other corporation of that description, may have a large part of its capital invested in securities payable in money, and so may be the owners of moneyed capital; but, as we have already seen, the shares of stock in such companies held by individuals are not moneyed capital.

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The terms of the Act of Congress, therefore, include shares of stock of other interests owned by individuals in all enterprises in which the capital employed in carrying on its business is money, where the object of the business is the making of profit by its use as money. The moneyed capital thus employed is invested for that purpose in securities by way of loan, discount, or otherwise, which are from time to time, according to the rules of the business, reduced again to money and reinvested. It includes money in the hands of individuals employed in a similar way, invested in loans, or in securities for the payment of money, either as an investment of a permanent character, or temporarily with a view to sale or repayment and reinvestment. In this way the moneyed capital in the hands of individuals is distinguished from what is known generally as personal property."

To the same effect is the case of Newark Banking Co. vs. Mayor, 121 U. S. 165, 30 L. Ed. 904, and Aberdeen Bank vs. Chehalis County, 166 U. S. 440, at 456, 41 L. Ed. 1076.

Now let us apply the direct holding of the Supreme Court of the United States to the allegations of the petition in this case. It is said: "The business of banking, as defined by law and custom, consists in the issue of notes payable on demand, intended to circulate as money where the banks are banks of issue; in receiving deposits payable on demand; in discounting commercial paper; making loans of money on collateral security; buying and selling bills of exchange; negotiating loans, and dealing in negotiable securities issued by the government, state and national, and municipal and other corporations. These are the operations in which the capital invested in national banks as employed, and it is the nature of that employment which constitutes it -n the eye of the statute 'moneyed capital.' Corporations and individuals carrying on these operations do come into competition with the business of national banks, and capital in the hands of individuals thus employed is what is intended to be described by the Act of Congress."

133

Private bankers are described in Section 1321 of the Supplement to the Code of Iowa as persons, a part of whose business is the receiving of deposits subject to check, on certificates, receipts, or otherwise, or the selling of exchange, and under the allegations of fact in the petition it is disclosed that the particular persons referred to as private bankers in Des Moines were engaged in the very business defined by the Supreme Court as constituting competition with the business of national banks. Therefore, it seems to us to follow irresistably that the allegations of the petition here as aided by the statutes of the state set forth, demonstrate that the private bankers referred to fall within the express definition of the Supreme Court of the United States when it construed the phrase of this law now under consideration, and having demonstrated that under the allegations of the petition there is disclosed a difference in the method of the assessment of the property of such private bankers, there is thereby established an infringement of the provisions of Section
5219, in that moneyed capital in the hands of individual
134 citizens of the State of Iowa is subjected to a different rate of
taxation than the shares of stock of national banks, resulting in the ultimate laying of a greater charge on the latter. This being true, it seems to us there can be no substance in the contention that the petition here does not state a cause of action, and we respectfully urge that the demurrer was properly overruled on this theory.

Counsel refer to certain decisions of the Supreme Court of Iowa, and of the Supreme Court of the United States. This court, as are all courts, in the determination of questions arising by virtue of federal laws, is controlled by the decisions of the Supreme Court of the United States.

It is true in the case of Head vs. Board of Review, 170 Iowa, 300, this court does discuss the question now presented, but a consideration of the decisions of the Supreme Court of the United States just hereinbefore referred to, it seems to us, demonstrates that this court erred in its conclusion in the Head case.

Indeed the Supreme Court in Mercantile Bank vs. New York, 121 U. S. 138, said:

"The rule of decision in Van Allen vs. Assessors, 70 U. S. 573, is not inconsistent with that followed in People vs. Commissioners, 71 U. S. 244. In the former of these cases the comparison was between taxes levied upon the shares of national banks and taxes levied upon the capital of state banks. In the valuation of the capital of state banks for this taxation, non-taxable securities of the United States were necessarily excluded, while in the valuation of shares of national banks no deduction was permitted on account of the fact that the capital of the national banks was invested in whole or in part in government bonds. The effect of this was of course, to discriminate to a very important extent in favor of investments in state
banks, the shares in which eo nomine were not taxed at all,
135 while their taxable capital was diminished by the subtraction
of the Government securities in which it was invested, and against national bank shares taxed without such deduction at a value necessarily and largely based on the value of the government

securities in which by law a large part of the capital of the bank was required to be invested."

It is, however, established beyond question by the further language of the court in that decision, that it is not the ownership of shares of stock in a banking corporation alone which determines the validity of the charge, but other interest owned by individuals in all enterprises in which the capital employed in carrying on its business is money where the object of the business is the making of profit by its use as money. Or as said by the court, the term "moneyed capital" includes "money in the hands of individuals employed in a similar way invested in loans, or securities, for the payment of money, either as an investment of a permanent character, or temporarily with a view to sale or repayment and reinvestment. In this way the money capital in the hands of individuals is distinguished from what is known generally as personal property."

Here are individuals conducting a banking business devoting a part of their capital to the purchase of these securities, and in so far as the devotion of their capital to this purpose is concerned, they are exempted from all taxation. The capital is nevertheless a part of the business in competition with national banks, and by reason of this very exemption arising from the nature of the property in which a portion of the banking capital is invested, there results a discrimination contrary to the terms of the law. These considerations lead us to the conclusion, as we think it must convince this court, that the reasoning in the announced decision in the Head case is erroneous.

136 Counsel in their additional brief and argument assert that the case of Bank of California vs. Richardson, supra, expressly authorizes the taxation of the shares of stock based upon the value of all the bank's assets, even though some of such assets are themselves tax exempt, and asserts that the ruling of the court was predicated upon the thought that the shares themselves had been once taxed. This is not true. There was no former taxation of the shares of stock in the Bank of California, National Association, and the court denied the right to tax the shares of stock in that association in so far as the value was comprised of assets exempt from taxation, such assets being stock in the Mills National Bank, the right to tax which had been exhausted.

Counsel urge, among other things, that the fact that the aggregate of the tangible assets of the Bank is made the measure of the assessment and is less than the actual value of the stock is a mere incident to the situation, but the Supreme Court of the United States did not consider this fact incidental in the case of Home Savings Bank vs. Des Moines, as will be found by a reference to the opinion in that case.

Counsel further state that the one thing sought to be avoided by Section 5219 of the Revised Statutes was over-valuation of National Bank shares, but omit to call to the Court's attention that it is over valuation as compared with other moneyed capital in the hands of individual citizens.

Also counsel state that the Legislature was so careful not to discriminate against Banks that it enacted Section 1322 1-A, omitting to state to the court that the shares of stock in other corporations is subject to a levy of only five mills on the dollar of actual valuation, whereas the shares of stock in a bank is subject to a
137 charge of the entire consolidated levy upon twenty per cent of the assessed value thereof. This consolidated levy in 1919 was in excess of 130 mills, and when applied to twenty per cent of the value is the equivalent of more than 2.6% as compared with one-half of one per cent laid against other property.

Again counsel assert that Section 5219 of the Revised Statutes forbids the taxing of a National Bank as such. Section 5219 is not a prohibitory statute. The very nature of the National Bank, being a federal agency, renders it and its stock immune from taxation without consent of Congress, and Section 5219 is therefore a grant of power rather than a restriction, but this grant is limited by the terms of the section which withholds authority to tax at a greater or different rate than is laid against other moneyed capital.

Again counsel point out in their argument that the thing that is taxed is the property of the shareholder, while the thing that is exempt to him under Chapter 257, Acts 38th General Assembly, is not his property but is the property of the corporation. The tax is based upon the property of the corporation, and as is pointed out in the Bank of California case for the purpose of taxation Congress considered the subject from the point of view of ultimate beneficial interest, that is, it treated the stock interest, the stockholder and the Bank as one, and so it is here.

It is at least a novel contention that funds of a private banker in competition with a National Bank when invested in federal securities are not subject to taxation at all, and yet because bank stock, the value of which is predicated upon federal securities owned by the bank, is subject to a taxation of twenty per cent thereof results in a discrimination in favor of the bank stock. How
138 can there be a discrimination in favor of bank stock which is assessed at some rate as against capital in the hands of a private banker, which is not subject to assessment at all?

Section 1321 requiring the statement including a specific discription of exempt securities was in effect re-enacted by Section 1322, and is comprised within its terms. The argument advanced by counsel that Section 1321 was not enacted by the 34th General Assembly is refuted by reference to Chapter 63 of the Acts of that Assembly, wherein it is found that by Section 3, Section 1321 was amended and by Section 4, Section 1322 was likewise amended so that the two sections are now as they appear in the Supplement to the Code of 1913. The argument advanced in this connection by counsel for appellants would require this court to read into the statute law of the State matters that do not now appear; that is, to require of National, State and Savings Banks a statement other than that specified by the statute, and this we do not believe this court will do.

It is, of course, readily conceded that this case involves an im-

portant public question, important no less to the tax payers, of which class this appellee is one, than to others in this State. Its importance renders it all the more the duty of this court to examine carefully the statutes and decisions hereinbefore referred to, and the mere fact that it involves a large sum of money will do no more we are sure than to cause this court to give the case the careful consideration to which it is entitled. This court will not decide this case one way or the other because of the mere fact that a large amount is involved.

We feel confident that upon a full and fair consideration of the record, and of the statutes and decisions hereinbefore referred to, this court must conclude that the lower court was correct in overruling the appellants' demurrers and in entering judg-
139–142 ment in favor of appellee.

Respectfully submitted.

SARGENT, GAMBLE & READ,
Attorneys for Appellee.

Certificate of Cost of Printing.

We hereby certify that the cost of printing the foregoing Brief and Argument was the sum of $—.

SARGENT, GAMBLE & READ,
Attorneys for Appellee.

Notice of Oral Argument.

To appellants and attorneys for appellants:

Notice is hereby given that appellee will ask to be heard in oral argument on submission of this appeal.

SARGENT, GAMBLE & READ,
Attorneys for Appellee.

143 Filed June 25, 1920. B. W. Garrett, Clerk Supreme Court.

In the Supreme Court of Iowa, May Term, 1920.

In Equity.

DES MOINES NATIONAL BANK, Appellee,

vs.

THOMAS FAIRWEATHER, Mayor; JOHN BUDD, E. A. ELLIOTT, HARRY B. Frase, and Ben Woolgar, Councilmen of the City of Des Moines, Constituting the Local Board of Review of said City, and The City of Des Moines, Iowa, Appellants,

Appeal from Polk County District Court.

Honorable Thomas J. Guthrie, Judge.

H. W. Byers, C. W. Lyon, C. A. Weaver, Nelson Miller, Attorneys for Appellants.

Sargent & Gable, Attorneys for Appellee.

Appellants' Reply Brief and Argument.

Due and legal service of the within Reply Brief and Argument is hereby accepted, and the receipt of a true copy thereof acknowledged this 25th day of June, 1920.

SARGENT, GAMBLE & READ,
Attorneys for Appellee.

144 *Reply Brief.*

Statement of the Position of Appellant- in Answer to the Propositions of Appellee Set Out in *Their* Answer Brief.

1.

For Reply to Proposition I.

A party cannot, by virtue of any court proceeding initiated and based upon an unconstitutional statute, acquire any right, or control the action of any other party, or of any official or official body, because:

(*a*) If the position of appellee be maintained, then for some purposes at least an unconstitutional statute becomes in fact the law, and will have the same force and effect as a constitutional statute, whereas it is axiomatic that such a statute is void for all purposes.

(*b*) Since it would not be law in all cases, but only in some cases, the net result would be back of uniformity in our laws, chaos and irregularity, instead of order and regularity.

(*c*) This proceeding was not initiated by the appellants, but by the appellee, and if the unconstitutionality of the statute cannot be set up by the appellants, the net result is the same as if the appellees had been permitted to bring mandamus, for the board's action is controlled as effectively as if mandamused. The court will look through the mere form of the action and see the real substance of what is done.

(*d*) If the courts and the public body affected may not set up the unconstitutionality of a statute, but must yield willing obedience to the demands of interested parties, it amounts to using the
145 courts, Judges and other public officials to give life to an unconstitutional statute which is not the law, yet these officials have sworn to protect the constitution and support it. The courts will not compel them to forswear themselves.

(*e*) The true rule in reference to this matter is: That while officials may not as a rule, initiate a proceeding to have a statute declared unconstitutional, yet when a court proceeding is initiated by others and directed against them to control their actions under an unconstitutional statute, they not only may but it is their sworn duty

to set up the unconstitutionality of the statute. This is especially true where great public interests are at stake, as in this case.

1-A.

Since the Iowa law taxes the stockholder on his share of stock, and not the bank as a corporation, the stockholder is the real party in interest in this proceeding. But the stockholders are not parties to this proceeding. Since the bank as a corporation is not the real party in interest, it had no standing in the lower court, nor has it in this court.

(*a*) If there be any virtue in the contention of appellee that the appellant board cannot resist this action because they are not personally interested, but act only as public officials, then by that same logic,—since the assessment is against the share of stock and is not against the bank,—the appellee bank cannot raise the question of the constitutionality of sections 1321, 1322 and 1322-1*a* of the statute, as they have done in this proceeding. Abstract p. 18, lines 8 to 19.

146 1-AA.

Irrespective of the judicial question raised by the appellee there would still remain for determination by this court the question of whether or not there should be granted to the stockholders of the appellee bank the exemption of the Federal Reserve stock held by said bank.

2.

Replying to Proposition II of Appellee's Brief.

This proposition has been fully answered by our reply to proposition 1 above. It may, however, be remarked in reference to subdivision (*b*) of their proposition, that municipal corporations are in no sense the 'agents' of the legislature. They are created through the instrumentality of the legislature, but as long as they are permitted to exist they have independent rights, and have no 'agency relationship' to the legislature.

3.

For Reply to Proposition III.

Sub-division (*a*) merely states a conclusion which is the very question up for decision, and therefore needs no reply.

Sub-divisions (*b*) and (*c*) merely state general rules of law to which all agree. The thing to be decided in this case is the application of the rules to the facts of this case, or the refusal to apply them to these facts.

(*a*) For reply to sub-division (*d*) of said proposition: The nature of the business in which taxpayers are engaged has never been
147 recognized as a reason for making a separate class of them for the purpose of granting exemptions. The nature of the business is a proper classification to be made in laws which impose taxes, but not in granting exemptions. Exemptions are a separate topic of the law, and are granted as a favor, and have no relation to the nature of a man's business.

(*b*) Exemptions are not germane to the nature of the business in which a taxpayer is engaged. Making a separate class of the stockholders of bank and loan and trust companies, and granting them exemptions of the obligations held by the bank or trust company, is unreasonable, arbitrary and discriminatory as against the stockholders of the class taxed under sections 1323 and 1324 of the Code when they are not granted the same exemptions, they being taxed by the same general plan.

(*c*) Sub-division (*e*) of said proposition has been fully answered in appellants' briefs heretofore filed.

4.

Appellee's proposition IV has been fully answered in the briefs heretofore filed.

5.

For Reply to Proposition V.

Sub-division (*a*) has been fully treated in the briefs already on file.

In reference to sub-division (*b*): Section 2 of Article 8 of the Iowa constitution does not command that the property of corporations shall be taxed, and it has not been so construed by this court. It is merely declaratory in nature.

(*a*) The section provided 'that the property of corpora-
148 tions shall be subject to taxation the same as that of individuals,' not that it shall be taxed the same as that of individuals.

(*b*) Assuming, but not conceding that the constitution does require the taxation of the property of corporations as such, a failure to tax such property would not render void a tax laid against the shares of stock, that being a separate property right.

6.

For reply to appellee's proposition VI the appellants refer to the proposition in appellants' brief that a share of stock is a separate property right from the property held by the corporation, and in addition thereto state:

(*a*) Any slight discriminations that may result in favor of moneyed capital as claimed by the appellee would be only such slight

discriminations as the courts have held are not fatal to the method of taxation.

(*b*) If the moneyed capital in the hands of a private individual was all invested in government obligations which are tax exempt then by such a proceeding the owner of the private capital would take himself out of the class of private bankers since his money must all be invested in government obligations and not used in purchasing loans and discounting loans and other monetary transactions.

(*c*) The exemptions granted to the private banker because of the government obligations held by him is an exemption granted to him by and because of a federal law and not by virtue of any state law, and the state will not hold unconstitutional a statute because it fails to overcome an exemption made obligatory by federal law.

149 Brief of Points.

I.

Officers upon whom the legislature has sought to impose a duty by statute, may assert the unconstitutionality of that statute as a defense to a court action initiated against them and which seeks to require them to perform the supposed duty.

Van Horn vs. State, 64 N. W. (Neb.) 365, 371 et seq.;
McDermott vs. Dinnie, 69 N. W. 294;
State vs. Canfield, 104 Pac. (Utah) 285;
State vs. Newark, 40 N. J. L. 71;
Lakewood vs. Brick, 26 Atl. (N. J.) 91.

(*a*) "A legislative act which is in conflict with the constitution is still born and of no force and effect,—impotent alike to confer rights or to afford protection. This general doctrine is adopted by the courts generally, and is the doctrine promulgated by the Supreme Court of the United States, as appears from the case of Norton vs. Shelby County, 118 U. S. 442; 30 Law. Ed. 183, where Mr. Justice Field speaking for the court says: 'An unconstitutional law is not a law; it confers no rights; it imposes no duties; it affords no protection; it creates no office; it is in legal contemplation, as inoperative as though it had never been passed.'"

State vs. Canfield, 104 Pac. (Utah), 285.

(*b*) "That the constitution is the fundamental law; an act of the legislature repugnant thereto is not merely voidable by the courts, it is absolutely void, and of no effect whatever. It is no law and binds no one to observe it. The officers of this state are sworn to support the constitution Where a supposed act of the legislature and the constitution conflict, the constitution must be obeyed, and the statute disregarded. Ministerial officers are therefore not
150 bound to obey an unconstitutional statute, and the courts, sworn to support the constitution, will not, by mandamus, compel them to do so."

Van Horn vs. State, 64 N. W. (Neb.) 365; 46 Neb., 62.

(c) A refusal of a tax assessing tribunal to grant exemptions provided for in an unconstitutional statute, and their right to question it, was upheld in

Little Rock, etc. vs. Worthen, 120 U. S. 97; 30 Law. Ed. 588.

II.

Permitting the individual holder of Moneyed Capital (private Bankers) to deduct from his assessment the tax exempt United States obligations held by him, when such deduction is not permitted to shareholders in National Banks, is not discrimination against National Bank stock, because:

(a) Section 5219 makes provisions with reference to individual holders of moneyed capital considered as a class, and takes no notice of matters that are personal to the individual, such as the ordinary exemptions granted by state laws, or matters that are peculiar to the particular kind of investment, such as federal exemption from taxation.

Amoskeag Savings Bank vs. Purdy, 231 U. S. 376; 58 Law. Ed. 373;

National State Bank vs. Burlington, 119 Iowa, 696, 699;

Adams vs. Nashville, 95 U. S. 19; 24 Law. Ed. 369;

Hepburn vs. School Directors, 23 Wall. 480; 23 Law. Ed. 112;

Mercantile Bank vs. New York, 121 U. S. 138; 30 Law. Ed. 895.

151 (b) The identical question raised by appellee in this case, in which they claim discrimination in favor of moneyed capital, was before this court in National Bank vs. Burlington, supra, and there decided adversely to them. The reasoning in that case has since been proved sound by Amoskeag Sav. Bk. vs. Purdy, supra.

Sections 1321, 1322 et seq. of the Iowa laws providing a method for the taxation of National and other bank shares, complies with all the provisions of section 5219 of the U. S. Revised Statutes. So held in a case where the state law was practically the same.

Amoskeag Savings Bank vs. Purdy, 231 U. S. 376; 58 Law. Ed. 373.

The provisions of Section 1322 of the Code of 1897, providing that "Shares of stock of State and Savings Banks and loan and trust companies shall be assessed to such banks and loan and trust companies and not to the individual stockholders", being the statute under which Home Savings Bank vs. Des Moines, 205 U. S. 503, was decided, rendered totally inapplicable to such banks and trust companies the provisions of Section 1325 giving the corporation a lien on the stock and unpaid dividends of the shareholder for the taxes paid. The change made by which such stocks are now assessed "to the stockholders", renders applicable the provisions of Section 1325. Herein lies the reason why, while the statute as it

formerly read was unconstitutional as decided in the Home Savings Bank case, it now is constitutional.

Section 1322 of the Code of 1897;
Section 1322 of the 1913 Supplement to the Code;
Section 1325 of the Code of 1897.

152 III.

The discrimination claimed by appellee to result because of Chapter 257 Acts of the 38th General Assembly is against the class of stockholders taxed by section 1323 of the Code.

Argument.

Counsel on page 58 of their brief say in reference to our interpretation of Bank of California vs. Richardson, that a certain contention is not true, and that there was no former taxation of the shares of stock in the Bank of California. We can only construe this as in evasion of the point made by appellant, or if not that, then there must be an inability of the writer to make plain his position in reference to that case. We will therefore try to see if we can make our position clearer. We must construe that decision in the light of former decisions, especially as the opinion evinces no purpose or desire to overrule any former decision. And we may here call attention to the remark of the Nebraska court in re First National Bank of Aurora, 171 N. W. 912, that the decision is not stated as clearly as is customary with the Supreme Court of the United States.

Counsel in their brief say section 5219 is not a prohibitory statute, which technically speaking is true, but as there is no right to tax a National Bank except by consent of congress as evidenced by that section, it follows that what is not there granted to the states must in the nature of things be prohibited. What then does section 5219 grant in the light of Bank of California vs. Richardson? It grants the right to tax a stockholder of a National Bank even though such stockholder be itself a National Bank. It grants
153 the right to tax all the immediate stockholders of a National Bank. It does not grant the right to tax the stockholders of a stockholder (the California Bank) in a National Bank (the D. O. Mills National Bank) upon the stock of the D. O. Mills bank held by the California bank, when the California bank had once been assessed as a stockholder in the Mills Bank. But why not? Not because the D. O. Mills Bank was a National Bank and as a corporation it was exempt from taxation, but because all the beneficial interest of the D. O. Mills Bank had been once taxed to the full extent permitted by section 5219 when the California Bank was taxed as one of its stockholders. The right granted to tax the beneficial interest in the Mills Bank, given by section 5219, was exhausted when the California Bank was taxed. To permit a taxation of the stockholders of the California Bank upon the stock ownership in the Mills Bank, would be to tax that beneficial interest again, not

by taxing the immediate stockholders of the Mills Bank as permitted and authorized by section 5219, but by taxing remote stock ownership, (the stockholders of a stockholder), which is not authorized by section 5219. The claim to tax the shareholders of the California Bank upon the stock ownership in the Mills Bank, was denied not because of the tax exempt character of the assets of the California Bank, but because of another independent consideration, viz., that such taxation would reach to and tax the ultimate beneficial interest in the Mills Bank, and such interest by virtue of section 5219 could be taxed only by taxing the immediate stockholders of the D. O. Mills National Bank. This is what the Chief Justice means when he speaks of "the one power to tax by the one prescribed method conferred by the statute, and which was the sole measure of the state authority."

We think we are justified in assuming that the Supreme
154 Court of the United States did not intend to overrule so important a principle as that established by the Van Allen case after that principle had become so firmly established by repeated decisions, not only of that court but of every court in the Union, that it is everywhere recognized as a rule of property, and that they did so overrule it without any public dissatisfaction with its operation or any public demand for its abolition. There is not one word either in the majority opinion or in the dissenting opinion that even intimates dissatisfaction with the Van Allen case to say nothing of overruling it. We believe that if they intended to overrule it that the membership of that court is such that they would have said so in words that could not be misunderstood. That they would have said that they no longer regarded it as authority and that it should be considered as withdrawn.

We further think that it is the duty of the bar and of the court to reconsile all new decisions with former decisions, if that is possible, rather than go on the assumption that former decisions had been overruled.

If the position of appellee is accepted then the Van Allen case is completely overruled and the states can no longer tax national bank stockholders without first excluding all government obligations from its assets. If the position of the appellant is accepted then the Van Allen case still stands and the case of Bank of California vs. Richardson, is reconciled with it.

That case limits the right of the state to tax the beneficial interests of the bank to taxing the immediate stockholders strictly as conferred by section 5219, but does not extend that right to tax to taxing the beneficial interest in the bank by taxing the stockholders of a stockholder.

155 Section 5219 grants the power to the States to tax the stockholders of a national bank upon the beneficial interest of the bank's assets. That power as far as granted is full and complete and includes the right to value the stock based upon all the assets of the bank whether tax exempt or not.

The Bank of California in the case of Bank of California vs. Richardson, was a stockholder in the D. O. Mills National Bank

and it was taxed as such by virtue of section 5219. The stockholders of the California Bank were not stockholders of the D. O. Mills National Bank, and hence section 5219 conferred no power to tax them in respect of the Mills National Bank, and as to tax them on the stock ownership of the California Bank in the Mills Banks would reach to the ultimate beneficial interest located in the Mills Bank, they could not be taxed on that ownership because of the negative prohibition of section 5219 limiting the right to tax to only the immediate stockholders of the D. O. Mills Bank. When the Chief Justice speaks of taxing the ultimate beneficial interests in the bank he means that the states are permitted to tax all the assets of the bank by taxing the stockholders, and this is the extent of the right conferred by section 5219.

Upon consideration of all the propositions presented to the court appellants feel that the action of the lower court should be reversed. This should be done not only from the standpoint of the law as stated in the decisions of the courts and upon general elementary principles but because of the effect upon the public in ex-
156–158 empting from taxation so large a body of property that it will seriously affect the revenues of the municipalities of the state.

Respectfully submitted,

H. W. BYERS,
C. W. LYON,
C. A. WEAVER,
NELSON MILLER,
Attorneys for Appellants.

It is hereby certified that the cost of printing the within Reply Brief and Argument was $10.50.

C. W. LYON,
Of Counsel for Appellants.

159 On the first day of July, 1920, the following proceedings were had in said cause, to wit:

In the Supreme Court of Iowa.

No. 33525.

DES MOINES NATIONAL BANK

vs.

THOMAS FAIRWEATHER, MAYOR, et al., Appellants,

Appealed from Polk County.

This cause is submitted on abstracts and arguments on file and oral argument of counsel for both parties.

160 Filed Feb. 12, 1921.

In the Supreme Court of Iowa.

33525.

DES MOINES NATIONAL BANK, Plaintiff, Appellee,

vs.

THOMAS FAIRWEATHER, Mayor; JOHN BUDD, E. A. ELLIOTT, HARRY B. FRASE, and Ben Woolgar, Councilmen of the City of Des Moines, Constituting the Local Board of Review of said City, and The City of Des Moines, Iowa, Defendants and Appellants.

Appeal from Polk District Court.

Hon. Thomas J. Guthrie, Judge.

In the district court this was an appeal from the action of the city council of Des Moines acting as the Board of Review in the matter of an assessment of the shares of stock of the plaintiff bank. The appeal was presented to the district court in the form of a petition filed by the plaintiff, to which petition the defendants demurred. The district court overruled the demurrer. The defendants electing to stand thereon, have appealed to this court.

H. W. Byers, Reson S. Jones, C. A. Weaver, Paul Hewitt, Attorneys for Appellants.
Sargent, Gamble & Read, Attorneys for Appellee.

EVANS, *C. J.*:

Pursuant to Section 1322 the bank furnished to the assessor the statement required by such section for the purpose of enabling the assessor to fix the assessed value of the bank shares of stock and to assess the same against the respective stockholders. From this statement it appeared that the capital stock, the surplus and the undivided earnings amounted to an aggregate of $905,849.00. This aggregate included real estate to the value of $156,000.00 and another
161 item of $62,000.00, both of which items were deducted by the Board of Review from the larger aggregate leaving a net valuation for the purpose of assessment of the shares of stock of $687,799.00.

It appeared also from such statement that the plaintiff held as an investment certain tax exempt securities of the U. S. government amounting to $1,442,486.00. The plaintiff demanded that the valuation of its shares for the purpose of assessment should be diminished by the amount of such tax exempt securities. This contention was denied by the Board of Review and allowed by the ruling of the District Court. The effect of such allowance was to absorb the entire value of the plaintiff's shares of stock for the purpose of

taxation and to leave no assessable value therein. Such result is sufficiently startling to challenge both judicial and legislative attention.

In its petition in the district court the plaintiff set forth the following seven grounds of attack upon the assessment: "1. Because said assessment subjected to taxation said securities of the United States Government.

2. Because said assessment subjected to taxation said securities of the United States Government contrary to the provisions of the Constitution of the United States and the statutes in such cases made and provided.

3. Because said assessment subjected to taxation shares of stock in a National Banking corporation, organized as aforesaid, at a greater rate than money capital in the hands of individual citizens of a state.

4. Because said assessment was not made in accordance with the provisions of Sections 1321 and 1322 of the Supplement to the Code of Iowa, for the reason that by said Section 1322 the Asses-
162 sor is required to fix the value of the shares of stock of corporations based upon the capital, surplus, and undivided earnings, disclosed by the statement therein required to be furnished by the corporation and required to contain the same information set forth in Section 1321 of the Supplement to the Code of Iowa, whereas by the fourth sub-division of Section 1321 the specific kinds and descriptions of bonds exempt from taxation is required to be stated, and that in and by the proceedings leading to said assessment such bonds have not been exempted from taxation, but have been considered in fixing the amount of said assessment.

5. Because in truth and in fact by the method pursued the assessment is of the tangible assets of the appellee and includes said securities issued by the United States Government.

6. Because said assessment is contrary to the provisions of section 5219 of the revised Statutes of the United States, for that the shares of stock in national banking associations are immune from taxation by State or Local Taxing authority, except upon the express consent of the Congress of the United States, and such consent, if any, is evidenced by the provisions of said Section 5219 of the Revised Statutes, whereas said section, for the purpose of preserving the State power of taxation, is construed by the Supreme Court of the United States to consider the subject from the point of view of ultimate beneficial interest; that is, said section treats the stock interest, the stockholder, and the bank as one and subject to one taxation by the methods which it provides.

7. That said assessment is not made in accordance with the provisions of Chapter 257, Acts of the 38th General Assembly, known as Senate File 479."

Defendants' demurrer was based upon two general grounds:
163 (1) That it appeared upon the face of the petition that the plaintiff was not entitled to any relief;

(2) That Chapter 257 of the 38th G. A. is unconstitutional and void.

These stated grounds of the petition and demurrer concisely present the scope of the whole controversy.

The demurrer was overruled generally so that the plaintiff stands here upon all the grounds of its petition; any one of which, if valid, is sufficient to sustain the ruling below. As to the first six grounds of plaintiff's petition they go to the power of taxation conferred upon the State by Section 5219 of the revised statutes of the U. S. The seventh ground goes to the construction and validity of the statute of this State Chapter 257, 38th G. A.

I. As to the first six grounds of complaint made by plaintiff against the assessment, these all involve the question of the power of the State under the permission of Section 5219 of the revised statutes of the U. S. to assess against the share holders of a national bank the value of the share of stock therein in accord with the provisions of our Section 1322 and regardless of the tax exempt character of the assets of the bank. We have ourselves held to the affirmative on this question. Head vs. Board of Review, 170 Iowa 300, First Nat. Bank vs. Council Bluffs, 182 Iowa 107. Such also is the holding of the Federal courts, whose precedents are obligatory upon this question. See Hannan, Co. Auditor, vs. First National Bank Council Bluffs, Fed. The cited case was decided very recently by the Federal Circuit of Appeals for this Circuit. It reviews the previous cases with great care and holds squarely that there is no conflict between Section 5219 of the revised statutes of the
164 U. S. and Section 1322 of the Code of Iowa.

In view of this pronouncement it is quite needless that we enter into argument on this feature of the case. Following the Federal holding in the Hannan case, we must hold that the first six grounds of complaint set forth in plaintiff's petition must each and all be overruled.

II. It remains to consider the seventh ground of the petition and the demurrer thereto. Chapter 257 of the 38th G. A. is a purported amendment to Section 1304 of the Supplement of 1915. Such Act with the title thereto is in full as follows:

"An act to amend section one thousand three hundred four (1304) supplemental to the code, 1915, relating to property exempt from taxation.

Be it enacted by the General Assembly of the State of Iowa:

Section 1. Banks or trust companies—stock—government securities—exemptions. That section one thousand three hundred four (1304) supplemental supplement to the Code, 1915, be and the same is hereby amended by adding after the semicolon in line sixteen thereof, the following: "Provided, however that in determining

the assessed value of bank stock, the amount of obligations issued by the United States government since the declaration of war against Germany, actually owned by a bank or trust company shall be deducted, and any bank or trust company which since January first, nineteen nineteen has been assessed on its shares of stock without so deducting such United States government securities shall be entitled to have its assessment on its shares reduced by the board of supervisors of the county in which such bank is located, so as to deduct from its total valuation such government securities.

165 Provided, however, that no deduction shall be made unless the bank or trust company claiming the same shall have been the owner in good faith and not for the sole purpose of securing such deduction, of said securities for a period of more than sixty (60) days prior to December thirty-first of the year preceding that for which the assessment is made."

Sec. 2. Publication clause. This act being of immediate importance shall become effective upon the publication thereof in the Des Moines Register and the Des Moines Capital, newspapers published in Des Moines, Iowa.

Approved April 18, A. D. 1819."

We find great difficulty in applying this statute to its purported subject matter. It purports to be a proviso amendment to the first sixteen lines of Code Section 1304. The first sixteen lines of such section constitute sub-section one thereof which is as follows:— "The following classes of property are not to be taxed.

1. The property of the United States and the state, including university, agricultural college and school lands; the property of a county, township, city, town or school district or militia company, when devoted entirely to public use and not held for pecuniary profit, municipal, school, and drainage bonds or certificates hereafter issued by any municipality, school district, drainage district or county within the state of Iowa; public grounds, including all places for the burial of the dead, crematoriums, the land on which they are built and appurtenant thereto not exceeding one acre, so long as no dividends or profits are derived therefrom; five engines and all implements for extinguishing fires, with the grounds used exclusively for their buildings and meetings of the fire companies; no

166 deduction from the assessment of the stock of any bank or trust company shall be permitted because of such bank or trust company holding such bonds and certificates as may be exempted above;"

Attaching to the foregoing sub-section the amendment set forth in Chapter 257 of the 38th G. A. the incongruity between the two parts as to subject matter is readily apparent. Section 1303 relates to the duties of the Board of Supervisors in the levy of millage taxes upon assessed property. Section 1304 purports to be an enumeration of the classes of property that "are not to be taxed."

That is the subject matter thereof. We do not overlook the last

sentence of sub-section one, and we may say in passing that this adds nothing to the subject matter of this section and takes nothing away therefrom. It is simply declaratory of the law as it was and is and would be if the sentence were wholly omitted. Chapter 257 under consideration has no reference to the subject matter of said section. It enumerates no exempt property; it declares no exemption; it withdraws no exemption. Its real subject matter is the method of fixing the assessed valuation of corporate stock in banks and trust companies. Such bank stock is not exempt from taxation. The amendment does not purport to make it exempt from taxation, even though such be the practical effect of it. The purport of such amendment is to fix a method or guide or rule for ascertaining the assessable value of such corporate stock. If it be given effect, such effect will necessarily be not to amend 1304 in relation to any part of its subject matter, but to amend radically if not destructively Section 1322. This section 1322 furnishes the one complete statutory scheme for arriving at the assessed value of all bank stock, including State, Savings and National Banks. For the purpose of such
167 assessed valuation it lays upon the assessor the ministerial duty to compute such assessed valuation upon the basis of the items specified in the statute. These items are to be furnished under oath by the corporate officers. They do not include any reduction for exempt assets. Pursuant to such section exempt assets are not deemed to reduce the value of the stock shared. Under this section we have held its provisions to be mandatory upon the assessor and that in obeying its mandate the act of the assessor is to be purely ministerial. First National Bank vs. Haynes, 171 N. W. R. 715. We have put the same construction upon this section of the statute since the enactment of Chapter 257 under consideration. Security Savings Bank vs. Board of Review, 178 N. W. R. 562. If Chapter 257 be deemed effective according to its terms, then its effect is to so amend and qualify Section 1322 as to destroy its mandatory character and likewise the ministerial character of the duty of the assessor, and to confer upon the assessor the power of discretion and judgment in the assessment of bank stock contrary to the provisions of said Section 1322. This is not a mere incidental effect of the amendment; it is its only effect. It has no effect whatever as to Section 1304 except as an addition to its subject matter. It neither repeals nor contradicts any provision of Section 1304; it qualifies no provision thereof; it confirms no provision thereof. Section 1304 so far as its own subject matter is concerned speaks precisely the same as it did before, and as it will speak if this amendment be stricken out.

Under the constitution (Section 29 Article 3) if the subject matter of an Act be not expressed in the title, the Act is void as to such subject. When it is considered that a legislative body has thrust upon its consideration during a brief session hundreds of
168 proposed bills and that the labor cast upon a member in order to enable an intelligent understanding of proposed Acts is a stupendous one and is necessarily performed with some degree of imperfection, we can readily see how important this constitutional

requirement is to intelligent legislation. If the title of a bill fairly discloses the general nature and objective of a proposed Act, the attention of the legislator is thereby challenged. Public attention is also challenged thereby. If the title withholds such disclosure or by indirection conceals it, such a course can operate only in aid of stealthy legislation.

As to the title of this act it contained nothing which fairly tended to challenge the attention of a legislator or the public to its nature or scope, or to the stupendous consequences of its operation. It is almost incredible that the consequences appearing in this case could have been contemplated by the Legislature. When it is considered that there are in existence U. S. securities to the amount of more than two thousand millions of dollars and that these may be bought in the market any day by any bank and may be sold again upon the same market, either early or late, the possibilities are astounding. The manifest practical effect of the Act would be to reduce the assessable value of all bank stock to a point below zero, and to protect all bank stock from any taxation whatever. This is accomplished not by a frank statutory declaration that bank stock shall be exempt from taxation, but by an artificial method of computing its assessable value which method is contradictory to Section 1322 and not amendatory of Section 1304.

We reach the conclusion therefore that the title to the Act under consideration would not justify our applying it as an amendment to Section 1322; that if it cannot be so applied, it can have
169 no effect whatever upon any issue in this case, this being an appeal from the Board of Review. The assessment under consideration was made in strict accord with Section 1322. Whether the amendatory Act can be deemed to have any validity for any purpose we have no occasion to determine. It is enough to say now that it must be deemed without validity as an amendment to Section 1322. The plaintiff cannot therefore stand upon it in an appeal from the Board of Review.

It follows that the defendant's demurrer should have been sustained as to all grounds of the petition on appeal. The order entered below is accordingly reversed.

Reversed.

Weaver, Preston, Stevens, Arthur, Fayville and De Graff, JJ., concur.

170 Filed Mch. 14, 1921. B. W. Garrett, Clerk Supreme Court.

In the Supreme Court of Iowa.

In Equity.

DES MOINES NATIONAL BANK, Plaintiff and Appellee,

vs.

THOMAS FAIRWEATHER, Mayor; JOHN BUDD, E. A. ELLIOTT, HARRY B. Frase, and Ben Woolgar, Councilmen of the City of Des Moines, Constituting the Local Board of Review of said City; and the City of Des Moines, Iowa, Defendants and Appellants.

Notice of Intention to File Petition for Rehearing.

To the above-named defendants and appellants; to H. W. Byers, Reson S. Jones, C. A. Weaver, Paul Hewitt, their attorneys, and to B. W. Garrett, clerk of the Supreme Court:

You are hereby notified that within sixty days from the date of the filing of the opinion in the above entitled cause, the plaintiff and appellee will file a petition for rehearing as provided by statute.

(Signed) SARGENT, GAMBLE & READ,
By K. W. SHARTEL,
Attorneys for Plaintiff and Appellee.

Service of the foregoing notice of intention to file petition for rehearing is hereby accepted and receipt of copy acknowledged this 14 day of March, 1921.

C. W. LYON,
C. A. WEAVER,
FRISK JORDAN,
Attorneys for Defendants and Appellants.

Service of the foregoing notice is hereby accepted and the same filed this 14 day of March, 1921.

(Signed) B. W. GARRETT,
Clerk of the Supreme Court.

171 Filed Apr. 12, 1921. B. W. Garrett, Clerk Supreme Court.

In the Supreme Court of Iowa, January Term, 1921.

In Equity.

DES MOINES NATIONAL BANK, Plaintiff and Appellee,

vs.

THOMAS FAIRWEATHER, Mayor; JOHN BUDD, E. A. ELLIOTT, HARRY B. Frase, and Ben Woolgar, Councilmen of the City of Des Moines, Constituting the Local Board of Review of said City, and the City of Des Moines, Iowa, Defendants and Appellants.

Appeal from Polk County District Court.

Honorable Thomas J. Guthrie, Judge.

H. W. Byers, Reson S. Jones, C. A. Weaver, Paul Hewitt, Attorneys for Appellants.
Sargent, Gamble & Read, Attorneys for Appellee.

Petition for Rehearing.

We hereby accept service of the within Petition for Rehearing, and acknowledge receipt of copies thereof, this 12th day of April, A. D. 1921.

H. W. BYERS,
RESON C. JONES,
C. A. WEAVER &
PAUL HEWITT,
Attorneys for Appellants.

172 The opinion in this case is reported in 181 North-Western at Page 459.

The court in the course of the opinion and in disposing of the first six grounds assigned in support of the opinions filed by appellee before the Board of Review states:

"1. As to the first six grounds of complaint made by plaintiff against the assessment, these all involve the question of the power of the State under the permission of Section 5219 of the Revised Statutes of the U. S. to assess against the share holders of a national bank the value of the share of stock therein in accord with the provisions of our Section 1322 and regardless of the tax exempt character of the assets of the bank. We have ourselves held to the affirmative on this question. Head vs. Board of Review, 170 Iowa, 300, First Nat. Bank vs. Council Bluffs, 182 Iowa, 107. Such also is the holding of the Federal courts, whose precedents are obligatory upon this question. See Hannan, County Auditor vs. First National Bank Council Bluffs, Fed. The cited case was decided very recently

by the Federal Circuit of Appeals for this Circuit. It reviews the previous cases with great care and holds squarely that there is no conflict between Section 5219 of the Revised Statutes of the U. S and Section 1322 of the Code of Iowa.

In view of this pronouncement it is quite needless that we enter into argument on this feature of the case. Following the Federal holding in the Hannan case, we must hold that the first six grounds of complaint set forth in plaintiff's petition must each and all be overruled."

I.

It is respectfully insisted that the court in that portion of the opinion heretofore set forth, and which disposes of the first six grounds of the objections assigned by appellee, has fallen into error for the following reasons:

173 The subject matter of the case of Hannan, County Auditor vs. First National Bank of Council Bluffs, — Federal, —, cited in the opinion was not identical with the subject matter of this suit for the reason that there was involved the Hannan case assessments for the years 1914 and 1915, the same being prior to the time of the issuance of the various classes of securities claimed as exempt from taxation in this litigation, and for the reason that the validity of the assessments, the subject matter of the case of Hannan vs. First National Bank was not attacked on the same grounds as involved in this litigation, especially on the ground as asserted in the objections of appellee filed in this case that under section 1321 and 1322 of the Code of Iowa, as amended, there is no authority on the part of the assessor to assess the shares of stock or property of a bank, except as such assessment is based upon the statement required by those sections to be returned, whereas, the statement provides in terms that the securities held by the bank, and which are by virtue of their terms exempt from taxation, shall be listed. We would most respectfully refer the court to the argument in our brief in chief in this case, which apparently has been overlooked by the court on this point. This argument is found in subdivision Number III on page 24 of appellee's brief and argument.

In addition to the argument there set forth, we would suggest that if this court had under consideration an assessment of a private banker as defined in section 1321, it would, we think, feel compelled to hold that such assessment was void if it was based upon exempt securities held by such private banker.

The information upon which the assessment made against the private banker is based is that information which is required by section 1321 to be included in the statement returned by
174 the private banker to the assessor, paragraph four of such statement requiring that there shall be specified "separately the actual value of bonds and stocks of every kind and shares of capital stock or joint stock of other corporations or companies held as an investment, or in any way representing assets, and the specific kinds and description thereof exempt from taxation."

Now, the method of procuring information upon which an assessment of an incorporated bank is based is identical as in the case of a private banker, because under section 1322 of the Supplement to the Code of Iowa, 1913, incorporated banks are required to furnish a verified statement of all the matter provided for in section 1321 of the Code, including, among other things, the listing of exempt securities, so that such securities are required to be listed when held by either the private banker or the corporate banker for investment purposes, and since section 1322 merely by reference adopts the provisions of Section 1321, the meaning of the language in section 1321 requiring the listing of such securities in the case of private bankers is carried into section 1322.

This position is strengthened we think by the holding of this court in the case of First National Bank vs. Hayes, 171 N. W. 715, where it was held that the assessor was obliged to predicate his assessment upon such statement, and that such statement must be based upon "the capital (not capital stock) to be computed from the statement furnished under section 1321, added to the surplus and undivided profits," and if the statute is to be sustained as constitutional, then it seems to us clear that the basis of the assessment must be the capital which is subject to taxation in either the case of private bankers or corporate bankers, as otherwise property specifically exempt and required to be so stated would be subjected to taxation.

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II.

Moreover, there was not involved in Hannan vs. First National Bank, supra, the ownership by the National Bank of any stock in the Federal Reserve Bank, whereas such question is involved in this case. The court knows, of course, because it is a provision of a general statute of the United States that "Federal Reserve Banks, including the capital stock and surplus therein and the income derived therefrom, shall be exempt from Federal, State and Local taxation, except taxes upon real estate" (38 Statutes at Large, 258). The Federal Reserve Bank is an instrumentality of the Federal Government. Neither it nor its stock is assessable by the State or any subdivision thereof, except by express consent of Congress. Congress has not granted such consent, as is evidenced by the portion of 38 Statutes just above quoted, and therefore the Des Moines National Bank, as such, is not subject to assessment on its ownership of Federal Reserve Bank stock. Thus, there is a distinction from such cases, as is evidenced by the holding in the case of National Bank vs. Boston, 125 U. S. 60, 31 L. Ed. 689.

But for the holding in the last mentioned case, the stock owned by the Bank of California in the D. O. Mills National Bank referred to in the case of Bank of California vs. Richardson, 248 U. S. 476, 63 L. Ed. 372, would have been in identically the same position as is the stock owned by appellee in the Federal Reserve Bank. And, that being true, we confess an utter inability to see how this, or any other court, can distinguish the claim we assert in so far as the assessment here is predicated upon stock owned by appellee and

issued by the Federal Reserve Bank from the holding of the Supreme Court of the United States in Bank of California vs.
176 Richardson, Supra, and we assert that the Circuit Court of Appeals had no such question under consideration in the case of Hannan vs. First National Bank, Supra, and did not in the course of its opinion give any consideration to the effect or validity of an attempted assessment against the First National Bank there or its shares of stock in so far as the ownership of stock in another Federal Bank was concerned, and yet this court in the course of its opinion merely dismisses so serious a contention as asserted by reference to the Hannan case, in which it was neither involved, discussed or decided.

We recognize, of course, that the decision of this court as to the constitutionality of Chapter 257 of the Thirty-Eighth General Assembly is final and conclusive, and since this court has decided the question of the constitutionality of that statute upon a ground neither raised, nor argued, nor urged either by written brief or in oral argument by any of the attorneys of record in this case, we assume it would be fruitless to reargue that question. However, as bearing upon other questions involved in this case we would call attention of the court to the fact that it is said in the course of this opinion "when it is considered that there are in existence United States securities to the amount of more than two thousand millions of dollars and that these may be brought in the market any day by any bank and may be sold again upon the same market, either early or late, the possibilities are astounding." We do not feel that we can in justice to the case under consideration leave this statement without notice. It is true, as the court says, that there are more than two thousand millions of dollars of United States securities issued and sold to the citizens, including the banks of this country since 1915, and since the Hannan case arose. It is likewise true, as this court will know from the same source of informa-
177 tion that it gained the knowledge that there were two thousand millions of dollars of securities of the United States issued, that all of those securities were issued by the United States Government to raise funds to forward a war, and that all of those securities bear a very low rate of interest. This court probably knows from the same source that the citizens of the country were encouraged and importuned, the banks were solicited and almost pressed into purchasing great quantities of these securities under the influence of a wave of patriotism which affected all right minded and good thinking persons in the country. Now because in answer to such solicitation, in answer to the urgent needs of the general Government, a citizen or a bank purchased quantities of these low interest bearing securities, is there afforded any reason in law for saying that that individual or that bank must be assessed upon those securities the amount of local taxes, although by virtue of the laws under which the securities were issued they were and are represented to be exempt from taxation.

We know the court may think that the argument we are now advancing is without the issue, but in view of the statement included

in the opinion of this court on this matter, and in view of the express statement of the Supreme Court of the United States in Bank of California vs. Richardson, that "it is also undoubted that the statute (section 5219 Revised Statutes) for the purpose of preserving the state power of taxation, considering the subject from the point of view of ultimate beneficial interest, treated the stock interest; that is, the stockholder and the bank as one and subject to the one taxation by the methods which it provided," we would ask if it is not pertinent to the consideration of this case to indulge the realization 178–180 that these securities were of the type and character referred to bearing the exemption specified whether in the hands of individuals or of an incorporated bank.

We respectfully refer the court to the argument in this connection contained on pages 25 to 61 inclusive of appellee's brief and argument in chief.

We cannot believe that this court intends to adhere to the expressed conclusion in its opinion as reported in the light of the record and in the light of the authorities referred to, and we respectfully urge a reconsideration of the case by the court in view of the suggestions herein contained, and on such reconsideration we insist that this court should enter an order affirming the action of the court below for all of the reasons specifically assigned.

Respectfully submitted,

SARGENT, GAMBLE & READ,
Attorneys for Appellee.

Certificate of Printing.

We hereby certify that the cost of printing the above and foregoing Petition for Rehearing was the sum of $8.00.

SARGENT, GAMBLE & READ,
Attorneys for Appellee.

Notice of Oral Argument.

To the appellants and their attorneys:

You are hereby notified that appellee will ask to be heard orally on the submission of the Petition for Rehearing.

SARGENT, GAMBLE & READ,
Attorneys for Appellee.

181 Filed May 20, 1921. B. W. Garrett, Clerk Supreme Court.

In the Supreme Court of Iowa, May Term, 1921.

In Equity.

DES MOINES NATIONAL BANK, Plaintiff and Appellee,

vs.

THOMAS FAIRWEATHER, Mayor; JOHN BUDD et al., Councilmen, Constituting Board of Review, and City of Des Moines, Iowa, Defendants and Appellants.

Appeal from Polk District Court.

Hon. Thomas J. Guthrie, Judge.

Sargent, Gamble & Read,
Attorneys for Appellee.
H. W. Byers, Reson S. Jones, C. A. Weaver,
C. W. Lyon, Nelson Miller,
Attorneys for Appellants.

Resistance to Petition for Rehearing.

Service of the within resistance to petition for rehearing is hereby accepted and the receipt of a true copy acknowledged on this 19th day of May, 1921.

SARGENT, GAMBLE & READ,
Attorneys for Appellee.

182 The appellant Board of Review resists the prayer of the petition for a rehearing of this case for the following reasons:

1. The petition for rehearing presents nothing new or overlooked, but only the very questions already passed upon by the court.

2. The questions to which attention is called in the petition as not having been considered at length in the court's opinion, must necessarily depend upon the same considerations and their decision be governed by the same reasons as those given in Hanan vs. First Nat. Bank, 269 Fed. 527; Head vs. Bd. of Review, 170 Iowa, 300; First National Bank vs. Council Bluffs, 182 Iowa, 107, all of which are cited in the court's opinion, thus showing that they have been considered by the court.

The first part of the petition sets out two claimed errors: 1st That because in the Hannan case the bonds involved were bonds issued before the declaration of war with Germany, whereas in this case the bonds involved are Liberty Bonds issued after such declaration and authorized by a separate Act of Congress, that therefore the Hannan case is not authority upon which to rest the decision

of this case. 2nd. That because sections 1321 and 1322 of the Codes of Iowa require tax exempt securities to be listed separately in the statement to be furnished by the banks, that therefore said sections do not authorize the inclusion of these bonds in valuing the bank's stock.

With reference to the first of these, it must be apparent that if section 1322 of the Code of 1913 does not tax the property of the bank, but the stock in the hands of the stockholder, as was
183 decided in the Hannan case, it can make no difference whether the bonds were issued before or after the declaration of war, or under what Act of Congress they were authorized. That to tax the stock of a banking corporation is not to tax the bonds owned by such bank, was first enunciated by Chief Justice Marshall in McCullough vs. Maryland, 4 Wheaton 316; 4 Law. Ed. 379, as long since as 1819, in these words:

"This opinion does not deprive the states of any resources which they originally possessed. It does not extend to a tax paid by the real property of the bank, in common with the other real property within the state, nor to a tax imposed on the interest which the citizens of Maryland may hold in this institution (The bank), in common with other property of the same description throughout the state."

Nearly fifty years after this Congress in the Act of June 3, 1864, wrote into the statutes what is now section 5219 of the Revised Statutes, the principle thus announced by Marshal in 1819, and this was followed by the case of Van Allen vs. Assessors, 3 Wall. 573; 18 Law Ed. 229, which fairly riveted this principle into the case law of the country.

A consideration of the reasons upon which these decisions rest leaves no room for argument that there can be any difference in the application of the rule between bonds issued before and those issued after the declaration of war with Germany. In presenting this no new or overlooked point is presented, but the court is simply asked to consider again what they considered upon the original submission of the case.

Next it is contended that because sections 1321 and 1322 require tax exempt securities to be listed separately, that therefore the sections do not require that such securities shall be included in valuing the stock. If the Legislature had intended this in the case
184 of a banking corporation, it most certainly would have said so, instead of leaving it to be inferred from the fact that in the statute (Section 1321) intended to apply in taxing private banks it did that which, if the law was to be followed it could not avoid doing, namely, list separately the tax exempt property. That the requirements of this statute were by reference made a part of section 1322, applying to the taxation of the stock of a banking corporation, furnishes no logical reason for claiming that the bonds are to be excluded in valuing the shares of a corporation. The reasoning is faulty because the thing taxed in the second case is a share of stock valued as a share of stock, while the thing- taxed in the first case are

bonds and other property, taxed as a bond and other property to the individual owner. If this claim of the bank is to be allowed, we must disregard the plain words of the mandatory language of section 1322 and the case of First National Bank vs. Hayes, 186 Iowa, 892, 171 N. W. 715, must be overruled. In presenting this no new or overlooked point is presented, but the court is again asked to consider what they considered upon the original submission.

The second part of the petition for rehearing proceeds on the theory that the case of Bank of California vs. Richardson, 248 U. S. 476; 63 Law Ed. 372, forbids the inclusion of the federal reserve bank stock owned by the Des Moines National in valuing its stock for purposes of taxation.

In the first place, if, as has been decided, section 1322 does not tax the bonds owned by the bank, but only the shares of stock, then neither does section 1322 tax the federal reserve bank stock owned by the Des Moines National, for, the federal reserve bank
185 stock bears exactly the same relation to the Des Moines National Bank and its stockholders that the United States bonds owned by such bank does. That being the case the same rule must apply. Section 5219 of the Revised Statutes permitted the taxation of a national bank on stock of another national bank owned by it, as was decided in National Bank vs. Boston, 125 U. S. 60; 31 Law Ed. 689. But otherwise it did not change the case law of the country, as is shown by the excerpt from Chief Justice Marshall in McCullough vs. Maryland hereinbefore set out.

The case of Bank of California vs. Richardson is by no means similar to this case. In the California case there were two national banks, and either one of them could by virtue of section 5219 be taxed on such stock as it might own in the other. In this case one bank is a federal reserve bank, and unlike the national bank, it is expressly forbidden to tax its stock no matter by whom it is held. In the California case one bank had been assessed and paid taxes on its stock ownership in the other national bank before it was attempted to tax this same stock to the stockholders of the bank paying the tax. In this case the Des Moines National Bank has not been assessed or paid any taxes on its stock ownership in the Federal Reserve bank, and it cannot be made to pay because of the prohibitions of the statute. Hence it follows that considered in the light of the federal statu-es applicable, the two cases are not similar because the two federal statutes involved are diametrically opposed to each other and the facts are different. Considered in the light of the case law that to tax the stock is not to tax the property held by a corporation, as announced by Marshal in 1819 in McCullough vs. Maryland, and later incorporated into section 5219 of the
186–188 statutes, and then again reaffirmed and expounded by Van Allen vs. Assessors, 3 Wall. 573; 18 Law Ed. 229; Owensboro National Bank vs. Owensboro, 173 U. S. 664; 43 Law Ed. 850, and other cases, the petition for a rehearing should be overruled as it presents nothing but what has already been fully and thoroughly considered by the court.

Respectfully submitted,

NELSON MILLER,
C. W. LYON,
Attorneys for Appellants.

I hereby certify that the cost of printing the foregoing resistance was $6.00 and that sum has been paid therefor.

C. W. LYON,
Attorney for Appellee.

189 On the 21st day of June, 1921, the following proceedings were had in said cause, towit:

In the Supreme Court of Iowa.

No. 33525.

DES MOINES NATIONAL BANK

vs.

THOMAS FAIRWEATHER, Mayor, et al., Appellants.

Appealed from Polk County.

This cause is submitted on appellee's petition for rehearing and resistance on file and oral argument of counsel for the petitioner.

190 Filed Sept. 28, 1921.

In the Supreme Court of Iowa.

33525.

DES MOINES NATIONAL BANK, Appellee,

vs.

THOMAS FAIRWEATHER, Mayor, et al., Appellants.

Supplemental Opinion on Rehearing.

EVANS, *Ch. J.*:

Original opinion was filed herein on February 12th, 1921, and is reported in 181 N. W. R. 459. Certain points are made in the petition for rehearing which merit further discussion. In our original opinion we disposed of plaintiff's first six grounds of complaint on the theory that each and all presented Federal questions and were disposed of by Federal authority. This assumption on our part was too broad in that ground "Four" of the complaint did challenge the validity of the assessment made by the Board of Review as being in violation of our own statute, Section 1322. All the grounds of complaint are specifically set out in the original opinion and we will not repeat them here. The challenge of ground "Four" now under consideration was and is that by the express provisions of Section 1322 of our Code Supplement the assessor was required to deduct from the assets all securities exempt from taxation in order to arrive at a basis of valuation of the shares of stock. The point

is now pressed in the petition for rehearing. The point thus made involves a consideration of both Sections 1321 and 1322 which are as follows:

"Sec. 1321. Private banks or bankers, or any person other than corporations hereinafter specified, a part of whose business is the receiving of deposits subject to check, on certificates, receipts, or otherwise, or the selling of exchange, shall prepare and furnish to the assessor a sworn statement, showing the assets, aside from real estate, and liabilities of such bank or banker on January first of the current year, as follows:

191 1. The amount of moneys, specifying separately the amount of moneys on hand or in transit, the funds in the hands of other banks, bankers, brokers or other persons or corporations, and the amount of checks or other cash items not included in either of the preceding items.

2. The actual value of credits, consisting of bills receivable owned by them, and other credits due or to become due;

3. The amount of all deposits made with them by others, and also the amount of bills payable;

4. The actual value of bonds and stocks of every kind and shares of capital stock or joint stock of other corporations or companies held as an investment, or in any way representing assets, and the specific kinds and description thereof exempt from taxation;

5. All other property pertaining to said business, including real estate, which shall be specially listed and valued by the usual description thereof; the aggregate actual value of moneys and credits, after deducting therefrom the amount of deposits, and the aggregate actual value of bonds and stocks, after deducting the portion thereof otherwise taxed in this state, and also the other property pertaining to the business, shall be assessed as provided by section thirteen hundred and five of this chapter, not including real estate, which shall be listed and assessed as other real estate.

Sec. 1322. Shares of stock of national banks and state and savings banks and loan and trust companies, located in this state, shall be assessed to the individual stockholders at the place where the bank or loan and trust company is located. At the time the assessment is made the officers of national banks, and state and savings bank and loan and trust companies shall furnish the assessor with lists of all the stockholders and the number of shares owned by each, and the assessor shall list to each stockholder under the head of corporation stock the total value of such shares. To aid the
192 assessor in fixing the value of such shares, the said corporation shall furnish him a verified statement of all the matter provided in section thirteen hundred twenty-one of the supplement to the code, 1907, which shall also show separately the amount of the capital stock and the surplus and undivided earnings, and the assessor from such statement shall fix the value of such stock based

upon the capital, surplus, and undivided earnings. In arriving at the total value of the shares of stock of such corporations, the amount of their capital actually invested in real estate owned by them and in the shares of stock of corporations owning only the real estate (inclusive of leasehold interests, if any,) on or in which the bank or trust company is located, shall be deducted from the real value of such shares, and such real estate shall be assessed as other real estate, and the property of such corporation shall not be otherwise assessed. A refusal to furnish the assessor with the list of stockholders and the information required under this section shall be deemed a misdemeanor and any bank or officer thereof so refusing shall be punished by a fine not exceeding five hundred dollars."

It will be noted that by the provisions of Section 1321 the private banker is required to aid the assessor by furnishing to him certain enumerated data as a description of his assets, including specific description of such assets as are "exempt from taxation."

Section 1322 by its reference to Section 1321 in effect calls for the same data. The argument now is that the same data which fixes the assessable value of the assets of a private banker must also fix the assessable value of the shares of stock of an incorporated bank. Manifestly United States securities are exempt from state taxation. To assess them for taxation in the hands of the owner whether private banker or other person would be an interference with Federal prerogative. Clearly therefore a private banker as owner of United States securities could under Federal law insist upon their exemption
193 from taxation. Does it follow that under Section 1322 they must be eliminated from consideration of the assessor in fixing upon the assessable value of the shares of stock held by the shareholders? Section 1322 answers this question in the negative in that it expressly directs the assessor to "fix the value of such stock" by basing such valuation "upon the capital, surplus and undivided earnings." Such was the course pursued by the assessor in this case. Whereas another provision of this section provides for the elimination of real estate from such basis of valuation, there is no provision in such section for eliminating "exempt" assets from such basis. We are not considering at this point whether any discrimination is presented in the operation of these two sections. If yea, a Federal question would be presented which we consider in the next division hereof. We hold here only that Sec. 1322 is mandatory upon the assessor as presenting a specific enumeration as a basis for the valuation of stock for the purpose of taxation and that such enumeration does not permit the elimination of "exempt assets" for the purpose of such valuation. It follows that the valuation fixed by the assessor was not in violation of our own statute.

II. Turning now to the Federal question, the point is made by petitioner that under Section 1321 a private banker could claim exemption of his United States securities from taxation and that the assessed valuation of his assets would be accordingly reduced proportionately, whereas no such exemption is available to a shareholder

of bank stock for the purpose of fixing the taxation value of his share; that therefore our statutes work a discrimination in favor of the private banker as against the shareholder of national bank stock in violation of Section 5219 of the Revised Statutes of the U. S. Our one concern in this field of discussion is to follow Federal authority and we might well rest our holding upon the recent case of Hannan v. First National Bank, 269 Fed. Reporter, 257, wherein the question now raised is fully considered by the United States Circuit Court of Appeals for this circuit.

194 Section 1321 creates no exemption. It merely recognizes such exemption as shall have been created by higher authority. On that question it is not legislative in an affirmative sense. It simply renders obedience to Federal sovereignty. The private banker claims his exemption if at all under the Federal statute and not under our statute. If Section 1321 should purport to accomplish uniformity by denying exemption to the private banker, it would be a vain effort. The exemption would still remain. It cannot be said therefore that any discrimination is created by the two sections of our statute.

But it is contended nevertheless that the practical operation of the law works a discrimination which entitles the plaintiff to the protection of Section 5219 U. S. Revised Statutes. This contention rests upon the argument that the taxation of shares of stock to the shareholders is the practical equivalent of the taxation of corporate assets to the corporation; that two formal methods of taxation are possible and that the doing of one is only an indirect method of doing the other. Whichever method of taxation be adopted, the burden of the tax must ultimately fall upon the shareholders. It is to be conceded that the two methods are ordinarily equivalent in practical ultimate result. It is to be conceded also that if a direct tax were levied against the corporation itself upon its assets, it could not be levied upon securities exempt under Federal statute. Does it follow that taxation may not be levied against the shareholder upon his shares of stock upon the basis of market value regardless of the character of the assets which give such market value? A corporation at most is but an artificial entity. Under sanction of law, it may be created or dissolved by the voluntary action of its shareholders. It can have no assets except such as are permitted by its shareholders. It is theirs to give or to take away. The value of the corporate assets and the value of the shares of stock are necessarily responsive. One flows into the other. They are not necessarily equal either in a legal or in a practical sense. Ordinarily however they are in a

195 practical sense approximately equal. The fact remains that the legal title to the assets is in the corporation. The property of the shareholders is in the stock. Under the law, this stock is clothed with all the attributes of property and may be bought and sold as such. Its owner is subject to taxation thereon. There is no limitation upon the power of the state both to tax the shareholder upon his stock and also to tax the corporation upon its corporate assets. This double power of taxation is not always, perhaps not often, exercised. It may fairly be said that the policy of this state

has been not to tax both the corporation upon its assets and the shareholder upon his stock. Such is the policy followed in the taxing of corporate banking. If the state were exercising herein its double power of taxation and were to tax the corporation upon its assets, the right of exemption would be available to the corporation. This fact however could not avail the shareholder to claim the exemption in the taxation of his stock. In a legal sense, a share of stock is an item of property separate and distinct from any asset of the corporation although the extent of its value may be materially dependent upon such assets. The character of this item of property and its liability to taxation remains precisely the same whatever the liability of the corporation itself may be for taxes upon its corporate assets. We use this argument only to illustrate the separate identity of a stock share as property. We neither hold nor suggest that the state has this double power of taxation as to national banks under the permission of Section 5219. The holding in Bank of California v. Richardson, 248 U. S. 476 would indicate otherwise. The power of "one taxation" however, is quite plenary under Section 5219 and is subject only to the qualification that there be no discrimination against national banks in favor of a corporate or individual competitor. The taxation of bank shares of stock to the shareholder is not in a legal sense the taxation of the corporate assets. Such tax is therefore not a tax upon exempt securities held by the corporation as a part of its assets. Such was the holding of the United
196 States Supreme Court in Van Allen v. Assessors, 3 Wall. 573; and in Owensboro National Bank v. Owensboro, 173 U. S. 664. Such also was the holding of the Hannan case, supra, which we purported to follow in the original opinion upon the Federal question presented. We hold therefore:—

(1) That our statute creates no discrimination against national banks in favor of any competitor whether corporate or individual; nor is it made to appear that any discrimination results from the practical operation of the law as applied;

(2) That the shareholder is not in a legal sense the owner of the exempt securities held by the corporation and that he is not therefore entitled to claim exemption thereunder.

III. Petitioner brings to our attention a recent opinion of the Supreme Court of the United States handed down July 15, 1921 since the submission of the petition herein, in the case of Merchants Nat. Bank v. Richmond. It is earnestly urged upon us that this opinion supports the contention of the petitioner and that it is quite decisive thereof. It appears from the opinion in that case that pursuant to certain legislation by the state and certain ordinances by the city of Richmond, Indiana, a certain rate of taxation of $1.75 per hundred dollars was imposed upon all bank corporations, state and national; whereas a rate of only ninety-five cents per hundred dollars was imposed upon moneyed capital in the hands of individuals who were competitors with the national banks in the loan market. This competition extended into millions of dollars and was therefore relatively material. It was held that "the ordinance and statute

under which the stock of plaintiff in error was assessed as construed and applied exceeded the limitations prescribed by Section 5219 Revised Statutes and hence that the tax is invalid." We are unable to see wherein such opinion runs counter to our present holding.

It is earnestly urged that the Hannan case, supra should not be deemed controlling of the case at bar. The emphasis of the
197 argument in support of the contention is that the exempt securities involved in the case at bar consisted of Federal Reserve stock and of recent bond issues, none of which were involved in the Hannan case and none of which were even in existance at the time the decision was rendered. The form or character of the exempt securities is not material to the decision. The ultimate question for solution both in the Hannan case and in this, was and is, whether, where a bank's corporate assets includes U. S. securities exempt from taxation under Federal statute, such right of exemption attaches to the shares of stock in the hands of the shareholder. If yea, then the rule or principle applies to all such exempt securities; if nay, it can apply to none. We are confirmed in our conclusion that our former opinion must be adhered to and the petition for rehearing is accordingly overruled.

198 Filed Nov. 18, 1921. B. W. Garrett, Clerk Supreme Court.

In the Supreme Court of Iowa, September Term, 1921.

In Equity.

DES MOINES NATIONAL BANK, Plaintiff and Appellee,

vs.

THOMAS FAIRWEATHER, Mayor; JOHN BUDD, E. A. ELLIOT, HENRY B. Frase, and Ben Woolgar, Councilmen of the City of Des Moines, Constituting the Local Board of Review of said City, and The City of Des Moines, Iowa, Defendants and Appellants.

Appeal from Polk District Court.

Honorable Thomas J. Guthrie, Judge.

Comes now the Des Moines National Bank, plaintiff and appellee, in the above entitled cause and states to the court that it does refuse to plead further in said cause, and elects to stand upon its petition and the demurrer thereto heretofore filed in said cause, and upon the record in said cause.

(Signed) SARGENT, GAMBLE & READ,
Attorneys for Plaintiff and Appellee.

[Endorsed:] Filed Nov. 22, 1921. B. W. Garrett, Clerk Supreme Court.

199 Filed Nov. 18, 1921. B. W. Garrett, Clerk Supreme Court.

In the Supreme Court of Iowa, September Term, 1921.

In Equity.

DES MOINES NATIONAL BANK, Plaintiff and Appellee,

vs.

THOMAS FAIRWEATHER, Mayor; JOHN BUDD, E. A. ELLIOT, HENRY B. Frase, and Ben Woolgar, Councilmen of the City of Des Moines, Constituting the Local Board of Review of said City, and The City of Des Moines, Iowa, Defendants and Appellants.

Appeal from Polk District Court.

Honorable Thomas J. Guthrie, Judge.

Come now the defendants and appellants above named, and show to the court that the plaintiff and appellee has filed in said cause in this court its election to stand upon the pleadings as made, and upon the record in said cause, and that public interest requires that final judgment be entered in said cause without delay, and thereupon move the court to render judgment in said cause and enter a proper decree therein.

(Signed) WM. E. MILLER,
HENRY H. GRIFFITHS,
C. A. WEAVER,
H. W. BEYERS,
Attorneys for Defendants and Appellants.

[Endorsed:] Filed Nov. 22, 1921. B. W. Garrett, Clerk Supreme Court.

200 Filed Nov. 18, 1921. B. W. Garrett, Clerk Supreme Court.

In the Supreme Court of Iowa, September Term, 1921.

In Equity.

DES MOINES NATIONAL BANK, Plaintiff and Appellee,

vs.

THOMAS FAIRWEATHER, Mayor; JOHN BUDD, E. A. ELLIOTT, HARRY B. Frase, and Ben Woolgar, Councilmen of the City of Des Moines, Constituting the Local Board of Review of said City, and The City of Des Moines, Iowa, Defendants and Appellants.

Appeal from Polk District Court.

Honorable Thomas J. Guthrie, Judge.

And now at this time, to-wit, November 18th A. D. 1921, this cause coming on to be heard upon the election of the plaintiff and appellee to stand upon the pleadings as made, and the record in said

cause, and upon the motion of the defendants and appellants, that judgment be rendered and decree entered in said cause, and the parties hereto having waived time for the presentation of said motion, and the court being fully advised in the premises is of the opinion that the demurrer to the petition of the plaintiff and appellee should be sustained.

It is accordingly ordered, adjudged and decreed by the court that the said demurrer of the said defendants and appellants to the petition of the plaintiff and appellee be and the same is hereby sustained.

The said plaintiff and appellee having refused to plead further, and now on November, 18th, 1921, electing to stand upon the pleadings as made and the record in said cause, it is ordered and adjudged by the court that the said defendants and appellants have and recover jugment against the said plaintiff and appellee.

201 It is thereupon upon consideration thereof ordered, adjudged and decreed as follows:

That the assessment returned by the Assessor and amended and as approved by said Board of Review in the year 1919, of $687,799.02 against the property or capital stock, exclusive of real estate, of the Des Moines National Bank be and the same is hereby confirmed, and that the defendants and appellants have and recover of the plaintiff and appellee above named its costs herein taxed and found to be the sum of $83.00.

Done at Des Moines, Iowa, this 18th day of November, 1921, by order of the Supreme Court of the State of Iowa.

(Signed) W. D. EVANS,
Chief Justice of the Supreme Court of the State of Iowa.

202 Filed Nov. 22, 1921. B. W. Garrett, Clerk Supreme Court.

In the Supreme Court of the State of Iowa.

No. —.

DES MOINES NATIONAL BANK, Plaintiff and Appellee,

vs.

THOMAS FAIRWEATHER, Mayor; JOHN BUDD, E. A. ELLIOTT, Harry B. Frase, and Ben Woolgar, Councilmen of the City of Des Moines, Constituting the Local Board of Review of said City, and The City of Des Moines, Iowa, Defendants and Appellants.

Petition for Allowance of a Writ of Error to the Supreme Court of the United States.

To W. D. Evans, Chief Justice of the Supreme Court of the State of Iowa:

The petition of the Des Moines National Bank, a corporation organized and existing under and by virtue of the laws of the Congress

of the United States, and having its principal place of business in the City of Des Moines, in said State of Iowa, plaintiff and appellee in the above entitled cause, respectfully shows to this court that on the 12th day of February, 1921, the Supreme Court of the State of Iowa rendered a decision in the above entitled cause, then pending on appeal therein, by which decision the judgment of the District Court of Polk County, Iowa, rendered in said cause was reversed; that thereupon and as provided by law, and under the rules of the Supreme Court of the State of Iowa, petitioner filed its petition for a rehearing in said cause, which was by the court on September 28, 1921, denied, but the Supreme Court of the State of Iowa on said date filed in said cause its supplemental opinion on petition on rehearing, by which it adhered to its former ruling reversing
203 the judgment of the District Court of Polk County, Iowa, rendered in said cause; that on the 17th day of November, 1921, said plaintiff and appellee having elected to stand upon the pleadings and record in said cause, and the said defendants and appellants having moved the court to render final judgment in said cause under the statutes of the State of Iowa in such cases made and provided, and such motion having been submitted to the court, the said Supreme Court of the State of Iowa did render its judgment and decree in said cause, by which it overruled the objections and exceptions of the plaintiff and appellee to the assessment of its property or shares of stock upon each and all of the grounds set forth in its petition, and amendment thereto, and confirmed the assessment as fixed by the Assessor of the City of Des Moines, and as confirmed by the said defendants as a Local Board of Review of said City, entered judgment accordingly, and that the said Supreme Court of the State of Iowa is the highest court of said State in which a decision of this action could be had.

That in said action there was drawn in question a right arising under statutes of the United States, and rights arising under the Constitution of the United States, and the decision of this cause in the Supreme Court of the State of Iowa is against and denies such rights; the said statutes of the United States being Section 5219 of the Revised Statutes of the United States, which is a revision of the acts of the Congress of the United States of June 3, 1864, (13 Statutes at Large 111), and February 10, 1868, (15 Statutes at Large 34), as also an Act of the Congress of the United States approved April 24, 1917, and commonly called the "First Liberty Bond Act," as also an Act of the Congress of the United States
204 approved September 24, 1917, and commonly called the "Second Liberty Bond Act," as also an Act of the Congress of the United States approved December 23, 1913, commonly called the "Federal Reserve Act," as amended.

The petitioner avers that the said several statutes, each and all at the time of the institution of this action had not expired by their own limitations, and were not altered or repealed by law.

That in said action there was also drawn in question the validity of statutes of, or an authority exercised under the State of Iowa,

on the ground that as administered they are repugnant to the constitution, treaties or laws of the United States, the said statutes being sections 1321 and 1322 of the Code of Iowa of 1897, as amended, and the decision was in favor of their validity.

Petitioner further represents and shows to the court that the judgment and decision of this court was erroneous in overruling the decision of the trial court, and in holding that the demurrer of the defendants and appellants to the petition of the plaintiff and appellee should have been sustained, and in sustaining said demurrer, and in holding that the petition of the plaintiff and appellee did not state a cause of action as against the defendants and appellants, and in holding that the assessment complained of did not subject to taxation securities of the United States Government issued pursuant to the provisions of the acts of the Congress hereinbefore specifically referred to, and in holding that its assessment complained of did not subject to assessment and taxation securities of the United States Government to the extent of $1,442,486.00, contrary to the provisions of the Constitution of the United States and the statutes in such cases made and provided, and in holding that said assessment did not subject to taxation shares of stock in a national banking corporation organized and existing pursuant to the acts of the Congress of the United States at a greater rate than is assessed against moneyed capital in the bonds of individual citizens of said state, and in holding that said assessment was not contrary
205 to the provisions of Section 5219 of the Revised Statutes of the United States, and in holding that said assessment did not subject to taxation securities issued pursuant to the Act of the Congress of the United States of December 23, 1913, commonly called the "Federal Reserve Act," as amended, and in holding that in truth and in fact by the method pursued the assessment was not of the tangible assets of the plaintiff and appellee, including securities of the United States Government, or securities issued under authority of the United States Government.

Petitioner shows to the court that the cause of action existing in favor of the plaintiff and appellee and against the defendants and appellants, as is disclosed by the record in this cause, was in pursuance to and by virtue of the aforesaid acts of Congress of the United States, and that in the administration of the said acts this court by its decision has committed error.

Petitioner, therefore, desires to avail itself of the law and practice in such case made and provided, by writ of error, from the Supreme Court of the United States.

Wherefore, petitioner prays for the allowance of a writ of error from the Supreme Court of the United States to this court, and for such other and further process as will enable your petitioner to obtain a review of the case, and a correction of the said error by the said Supreme Court of the United States, and also that an order be made fixing the amount of security which said plaintiff in error shall give and furnish upon said writ of error, and that upon the giving of such security all further proceedings in this court be sus-
206 pended and stayed until the determination of said writ of error by the Supreme Court of the United States, and that a

transcript of the record, proceedings and papers in this cause, duly authenticated, may be sent to the Supreme Court of the United States.

And your petitioner will ever pray, etc.

SARGENT, GAMBLE & READ,
Attorneys for Des Moines National Bank,
Plaintiff and Appellee.

207 Filed Nov. 22, 1921. B. W. Garrett, Clerk Supreme Court.

In the Supreme Court of the State of Iowa.

No. —.

DES MOINES NATIONAL BANK, Plaintiff and Appellee,

vs.

THOMAS FAIRWEATHER, Mayor; JOHN BUDD, E. A. ELLIOTT, HARRY B. FRASE, and Ben Woolgar, Councilmen of the City of Des Moines, Constituting the Local Board of Review of said City, and The City of Des Moines, Iowa, Defendants and Appellants.

Order Granting Writ of Error to the Supreme Court of the United States.

Upon reading the petition and assignments of error of the Des Moines National Bank, plaintiff and appellee, praying for the allowance of a Writ of Error from the Supreme Court of the United States to this court to review the judgment of this court heretofore rendered to-wit, on February 12, 1921, on September 28, 1921, and on November 17, 1921, and it appearing from said petition and the record in this cause that a proper cause for the allowance of said writ is presented, it is ordered, that the same be, and is hereby allowed.

It is further considered, ordered and adjudged that the amount of security which the said plaintiff and appellee shall give and furnish upon said writ of error, be, and hereby is, fixed at ($1,000) One Thousand Dollars, and that said security shall be by bond, conditioned according to law, and with sureties to be approved by the Chief Justice of the Supreme Court of the State of Iowa, and that upon the giving and approval of such bond, all further proceedings in this Court be suspended and stayed until the determination of said
208 Writ of Error in the Supreme Court of the United States.

Done this 22nd day of November, A. D. 1921.

W. D. EVANS,
Chief Justice of the Supreme Court
of the State of Iowa.

209 Filed Nov. 22, 1921. B. W. Garrett, Clerk Supreme Court.

In the Supreme Court of the State of Iowa.

No. —.

DES MOINES NATIONAL BANK, Plaintiff and Appellee,

vs.

THOMAS FAIRWEATHER, Mayor; JOHN BUDD, E. A. ELLIOTT, HARRY B. FRASE, and Ben Woolgar, Councilmen of the City of Des Moines, Constituting the Local Board of Review of said City, and The City of Des Moines, Iowa, Defendants and Appellants.

Bond.

Know all men by these presents: That we, the Des Moines National Bank, a corporation, as Principal, and Globe Indemnity Company of Newark, N. J., as Surety, are held and firmly bound unto Thomas Fairweather, Mayor, John Budd, E. A. Elliott, Harry D. Frase and Ben Woolgar, Councilmen of the City of Des Moines, constituting the Local Board of Review of said City, and the City of Des Moines, Iowa, Defendants and appellants in the above entitled cause, in the sum of One Thousand and no/100 ($1,000.00) Dollars, lawful money of the United States of America, to the payment of which well and truly to be made, the said principal and the said surety bind themselves, their and each of their successors, representatives and assigns, jointly and severally, firmly by these presents:

Sealed with our seals and dated this 22nd day of November, A. D. 1921.

Whereas, in the above entitled cause, the Supreme Court of the State of Iowa, rendered its decision on to-wit, February 12, 1921, reversing the judgment of the District Court of Polk County, Iowa, in said cause, and

210 Whereas, the Supreme Court of the State of Iowa rendered its decision on to-wit, September 28, 1921, denying the petition for a rehearing filed in said cause by the said plaintiff and appellee, and adhering to its decision reversing the judgment of the District Court of Polk County, Iowa, in said cause, and

Whereas, the Supreme Court of the State of Iowa on to-wit, November 17, 1921, rendered its final judgment and decree in said cause, overruling the objections and exceptions of the plaintiff and appellee to the assessment of its property or shares of stock as in said cause set forth specifically, and confirming said assessment, and the said Des Moines National Bank, having obtained a writ of error, and filed a copy thereof in the Clerk's office of the said Supreme Court of the State of Iowa, to reverse the judgment in the aforesaid suit, a citation directed to the said Thomas Fairweather, Mayor, John Budd, E. A. Elliott, Harry B. Frase and Ben Woolgar, Councilmen of the City of Des Moines, constituting the Local Board of Review of said

City, and the City of Des Moines, Iowa, citing and admonishing them to be and appear at the Supreme Court of the United States at Washington, within thirty (30) days from the date thereof.

Now, therefore, the condition of this obligation is such that if the said Des Moines National Bank shall prosecute its said Writ of Error to effect and answer all damages and costs if it fails to make its
211 plea good, then the above obligation to be void, otherwise to remain in full force and virtue.

DES MOINES NATIONAL BANK,
By JOHN A. CAVANAGH,
Prest.
GLOBE INDEMNITY COMPANY,
By W. V. WILCOX,
Attorney in Fact,
Surety.

STATE OF IOWA,
County of Polk, ss:

On this 22nd day of November, A. D. 1921, personally appeared before me John A. Cavanagh who being duly sworn, deposes and says that he is the resident President for the Des Moines National Bank; that the seal affixed to the foregoing instrument is the corporate seal of said corporation, and that this instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors, and the said John A. Cavanagh acknowledged said instrument to be the free act and deed of said corporation.

BERNARD AHROLD,
Notary Public.

My Commission expires July 4th, 1924.

I approve the foregoing bond and sureties, this 22nd day of November, A. D. 1921.

W. D. EVANS,
Chief Justice of the Supreme Court of Iowa.

212 Filed Nov. 22, 1921. B. W. Garrett, Clerk Supreme Court.

In the Supreme Court of the State of Iowa.

DES MOINES NATIONAL BANK, Plaintiff and Appellee,

v.

THOMAS FAIRWEATHER, Mayor; JOHN BUDD, E. A. ELLIOTT, HARRY D. FRASE, and Ben Woolgar, Councilmen of the City of Des Moines, Constituting the Local Board of Review of said City, and The City of Des Moines, Iowa, Defendants and Appellants.

Order Staying Procedendo and Directing the Clerk to Prepare Record for the Supreme Court of the United States.

Now on this 22nd day of November, 1921, the appellee having presented a petition for the allowance of a Writ of Error to the Su-

preme Court of the United States and the court having on the 21st day of November, 1921, signed an order granting a Writ of Error to the Supreme Court of the United States, and the appellee having filed its bond as security upon said Writ of Error, which bond has been approved by the Chief Justice of the Supreme Court of the State of Iowa, and the appellee having filed its assignment of errors, it is ordered and adjudged that Procedendo in the above cause be and the same is hereby stayed pending the submission and determination by the Supreme Court of the United States of Appellee's Writ of Error,

And it is further ordered that the clerk of this court forthwith prepare and certify a copy of the record of the proceedings in this cause in this court and deliver the same to the attorneys for appellee for transmission to the Clerk of the Supreme Court of the
213 United States; such copy of the record in this court to be prepared at the cost of the appellee.

W. D. EVANS,
Chief Justice of the Supreme Court of the State of Iowa.

214 Filed Nov. 23, 1921. B. W. Garrett, Clerk Supreme Court.

In the Supreme Court of the State of Iowa.

DES MOINES NATIONAL BANK, Appellee,

vs.

THOMAS FAIRWEATHER, Mayor; JOHN BUDD, E. A. ELLIOTT, HARRY B. FRASE, and Ben Woolgar, Councilmen of the City of Des Moines, Constituting the Local Board of Review of said City, and The City of Des Moines, Iowa, Appellants.

Stipulation.

It is hereby stipulated and agreed by and between the parties to the above entitled cause by their attorneys that the complete record of the proceedings in the Supreme Court of the State of Iowa shall be by the Clerk of the Supreme Court of Iowa certified to the Supreme Court of the United States, and that said record shall include all briefs, arguments and resistances filed by the respective parties, together with all orders, opinions and judgments of the court, and all other filings of record in said court, so that the entire record therein may be before the Supreme Court of the United States. And the right is reserved on behalf of defendant-appellants (Board of Review of the City of Des Moines), for their counsel to supply anything omitted from the record certified hereunder.

Dated at Des Moines, Iowa, this 23rd day of November, A. D. 1921.

SARGENT, GAMBLE & READ,
Attorneys for Appellee.

WM. E. MILLER,
HENRY H. GRIFFITH,
C. A. WEAVER,
H. M. BYERS,
Attorneys for Appellant.

215 In the Supreme Court of the State of Iowa.

DES MOINES NATIONAL BANK, Appellee,

v.

THOMAS FAIRWEATHER, Mayor; JOHN BUDD, E. A. ELLIOTT, HARRY B. Frase, and Ben Woolgar, Councilmen of the City of Des Moines, Constituting the Local Board of Review of said City, and The City of Des Moines, Iowa, Appellants.

Clerk's Certificate of Transcript.

I, B. W. Garrett, Clerk of the Supreme Court of the State of Iowa, do hereby certify that the foregoing transcript consisting of 214 pages constitutes a full, true and correct copy of the record and proceedings had and orders entered in the above entitled cause as set forth therein as the same appears on file and remains of record in my office. The Writ of Error, Citation, and Assignment of Errors in the Supreme Court of the United States herewith attached at pages 1, 3, and 5, respectively, are the original Writ of Error, the original Assignments of Errors, and the original Citation in this cause. The foregoing constitutes the entire transcript in the cause.

In witness whereof, I have hereunto set my hand and affixed the seal of the Supreme Court of the State of Iowa at Des Moines, Iowa, this 23d day of November, A. D. 1921.

[Seal of the Supreme Court of Iowa.]

B. W. GARRETT,
Clerk.

Endorsed on cover: File No. 28,581. Iowa Supreme Court. Term No. 626. Des Moines National Bank, plaintiff in error, vs. Thomas Fairweather, mayor; John Budd, E. A. Elliott, et al., councilmen of the city of Des Moines, &c., et al. Filed November 25, 1921. File No. 28,581.

INDEX.

AUTHORITIES.

IN THE

Supreme Court of the United States

OCTOBER TERM, 1921.

No. 626

DES MOINES NATIONAL BANK,
Plaintiff in Error,
vs.
THOMAS FAIRWEATHER, Mayor, *et al.*,
Defendants in Error.

STATEMENT OF THE CASE.

This is a proceeding in error to the Supreme Court of Iowa to review the judgment of that court reversing the judgment and decree of the District Court of Polk County, Iowa, which fixed the assessment of the property or shares of stock of the Des Moines National Bank, a corporation organized under the laws of Congress, and having its principal place of business in Des Moines, Iowa, herein called "plaintiff in error," for the purposes of general taxation in the year 1919.

The assessment of the property or shares of stock of national banks for the purpose of general taxation is effected under the provisions of sections 1321 and 1322 of the Supplement to the Code of Iowa of 1913, which sections are as follows:

> Sec. 1321. Private banks or bankers, or any persons other than corporations hereinafter specified, a part of whose business is the receiving of deposits subject to check, on certificates, receipts, or otherwise, or the selling of exchange, shall prepare and furnish to the assessor a sworn statement, showing the assets, aside from real estate, and liabilities of such bank or banker on January first of the current year, as follows:

1. The amount of moneys, specifying separately the amount of moneys on hand or in transit, the funds in the hands of other banks, bankers, brokers or other persons or corporations, and the amount of checks or other cash items not included in either of the preceding items;

2. The actual value of credits, consisting of bills receivable owned by them, and other credits due or to become due;

3. The amount of all deposits made with them by others, and also the amount of bills payable;

4. The actual value of bonds and stocks of every kind and shares of capital stock or joint stock of other corporations or companies held as an investment, or in any way representing assets, and the specific kinds and description thereof exempt from taxation;

5. All other property pertaining to said business, including real estate, which shall be specially listed and valued by the usual description thereof; the aggregate actual value of moneys and credits, after deducting therefrom the amount of deposits, and the aggregate actual value of bonds and stocks, after deducting the portion thereof otherwise taxed in this state, and also the other property pertaining to the business, shall be assessed as provided by section thirteen hundred and five of this chapter, not including real estate, which shall be listed and assessed as other real estate."

Sec. 1322. Section thirteen hundred twenty-two of the supplement to the code, 1907, is hereby repealed and the following enacted in lieu thereof:

Shares of stock of national banks and state and savings banks, and loan and trust companies, located in this state, shall be assessed to the individual stockholders at the place where the bank or loan and trust company is located. At the time the assessment is made the officers of national banks and state and savings banks and loan and trust companies shall furnish the assessor with lists of all the stockholders and the number of shares owned by each, and the assessor shall list to each stockholder under the head of corporation stock the total value of such shares. To aid the assessor in fixing the value of such shares, the said corporation shall furnish him a verified statement of all the matter provided in section thirteen hundred twenty-one of the supplement to the code, 1907, which shall also show separately the amount of the capital stock and the surplus and undivided earnings, and the assessor from such statement shall fix the value of such stock based upon the capital, surplus, and undivided earnings. In arriving at the total value of the shares of stock of such corporations, the amount of their capital actually invested in real estate owned by them

and in the shares of stock of corporations owning only the real estate (inclusive of leasehold interests, if any), on or in which the bank or trust company is located, shall be deducted from the real value of such shares, and such real estate shall be assessed as other real estate, and the property of such corporation shall not be otherwise assessed. A refusal to furnish the assessor with the list of stockholders and the information required under this section shall be deemed a misdemeanor and any bank or officer thereof so refusing shall be punished by a fine not exceeding five hundred dollars.

Early in the year 1919 plaintiff in error furnished to the assessor of the City of Des Moines a statement of the matters provided for in said section 1321.

By the provisions of section 1370 of the Supplement to the Code of Iowa, 1913, the City Council of the City of Des Moines constitutes the Local Board of Review for said city, and is required to meet on the first Monday of April in each year for the purpose of adjusting assessments for the city, by raising or lowering the assessment of any person, corporation or association as to any or all of the items of his assessment, in such manner as to secure the listing of property at its actual value and the assessment of property at its taxable value, and by adding to the assessment rolls any taxable property not included therein, assessing the same in the name of the owner thereof as the assessor should have done.

Under the provisions of section 1373 of the Supplement to the Code of Iowa, 1913, opportunity to make complaint of assessments and to appeal from an adverse ruling by the Local Board of Review is accorded to a property owner, said section 1373 being as follows:

"Any person aggrieved by the action of the assessor in assessing his property may make oral or written complaint thereof to the board of review, which shall consist simply of a statement of the errors complained of, with such facts as may lead to their correction, and any person whose assessment has been raised or whose property has been added to the assessment rolls, as provided in the preceding section, shall make such complaint before the meeting of the board for final action with reference thereto, as provided in said section, and appeals may be taken from the action of the board with reference to such complaints to the district court of the county in which such board holds its sessions, within twenty days after its adjournment. Appeals shall be taken by a written notice to that effect to the chairman or presiding officer of the reviewing board, and served as an original notice. The court shall hear the appeal in equity and determine

anew all questions arising before the board which relate to the liability of the property to assessment or the amount thereof, and its decision shall be certified by the clerk of the court to the county auditor, who shall correct the assessment books in his office accordingly. Any officer of a county, city, town, township or school district interested or a taxpayer thereof may in like manner make complaint before said board of review in respect to the assessment of any preperty in the township, city or town and an appeal from the action of the board of review in fixing the amount of assessment on any property concerning which such complaint is made, may be taken by any of such aforementioned officers. Such appeal is in addition to the appeal allowed to the person whose property is assessed and shall be taken in the name of the county, city, town, township or school district interested and tried in the same manner, except that the notice of appeal shall also be served upon the owner of the property concerning which the complaint is made and affected thereby or person required to return said property for assessment. Upon trial of any appeal from the action of the board of review fixing the amount of assessment upon any property concerning which complaint is made, the court may increase, decrease or affirm the amount of the assessment appealed from."

In the year 1919 complaint having been made by plaintiff in error to said Local Board of Review of the action of the assessor in assessing its property or shares of stock and said local board of review having affirmed said assessment and overruled such complaint, plaintiff in error perfected an appeal in accordance with the terms of the said statute, and thereafter filed with the Clerk of the District Court of Polk County, Iowa, its petition in equity, which alleged the following

FACTS.

Plaintiff in error on January 1, 1919, owned and held as an investment securities of the United States Government issued pursuant to the acts of Congress of April 24, 1917, and Sept. 24, 1917, as amended, of the following kinds and classes to wit:

Liberty Bonds of the face value of	$487,800.00
Certificates of indebtedness of the United States Treasury	924,000.00
War Savings Stamps of the value of	3,686.00

Said Bank also on January 1, 1919, owned and held as an investment stock in the Fed-

eral Reserve Bank, created and organized under and by virtue of the Act of Congress of December 23, 1913, of the face value of	27,000.00
Making the total of such securities so held as an investment	$1,442,486.00

On January 1, 1919, as required by Section 1322 of the Supplement to the Code of Iowa, plaintiff in error made a statement to the City Assessor showing its capital stock, surplus and undivided earnings to aggregate $905,849.02, but that from such aggregate the amount of $62,000.00 should be deducted as representing an obligation of plaintiff in error under a contract specifically referred to. Included in the assets of the bank from which such capital, surplus and undivided earnings were computed were said securities of the United States Government aggregating $1,442,486.00; that plaintiff in error owned and held as an investment real estate of the total assessed value of $156,050.00, and that the City Assessor assessed the total value of the shares of stock of plaintiff in error at $748,799.00, or at an amount substantially and practically identical with the total capital, surplus and undivided earnings of said corporation, including the value of said securities issued by the United States Government, and including the amount of the obligation of said bank on account of said contract.

The Local Board of Review on April 30, 1919, by resolution corrected said assessment by reducing the same to the sum of $687,799.02, this correction requiring the reduction of the assessment by the sum of $62,000.00 represented by the amount of the obligation outstanding under said contract with the German Savings Bank, but overruled the complaint of plaintiff in error in all other respects.

On January 1, 1919, there were in the City of Des Moines persons other than corporations, a part of whose business was the receiving of deposits subject to check, on certificates, receipts, or otherwise, or the selling of exchange, or in other words, there were within the limits of said city persons engaged in business as private bankers within the meaning of Section 1321 of the Supplement to the Code of Iowa; that the Drake Park Bank, the Cottage Grove Bank, Oak Park Bank and Capitol Hill Bank, were each conducted by persons other than corporations and as private bankers within the meaning of said act, and that such private bankers were direct competitors of plaintiff in error.

After averring the provisions of Section 1321 and 1322 of the Supplement to the Iowa Code, as also the provisions of Section 5219 of the Revised Statutes of the United States and the applicable provisions of the Acts of Congress of April 24, 1917, (40 St. at Large, c 4, p. 35) and September 24, 1917, (40 St. at Large, c. 56, p. 288) and December 23, 1913, (38 St. at

large, c. 6, p. 251) said plaintiff in error averred that said assessment was erroneous upon the following grounds:

1. Because said assessment subjected to taxation said securities of the United States Government.

2. Because said assessment subjected to taxation said securities of the United States Government contrary to the provisions of the Constitution of the United States and the statutes in such cases made and provided.

3. Because said assesment subjected to taxation shares of stock in a national banking corporation, organized as aforesaid, at a greater rate than moneyed capital in the hands of individual citizens of a state.

4. Because said assessment was not made in accordance with the provisions of Sections 1321 and 1322 of the Supplement to the Code of Iowa, for the reason that by said Section 1322 the Assessor is required to fix the value of the shares of stock of corporations based upon the capital, surplus and undivided earnings, disclosed by the statement therein required to be furnished by the corporation and required to contain the same information set forth in Section 1321 of the Supplement to the Code of Iowa, whereas by the fourth subdivision of section 1321 the specific kinds and descriptions of bonds exempt from taxation is required to be stated, and that in and by the proceedings leading to said assessment such bonds have not been exempted from taxation, but have been considered in fixing the amount of said assessment.

5. Because in truth and in fact by the method pursued the assessment is of the tangible assets of the plaintiff in error and includes said securities issued by the United States Government.

6. Because said assessment is contrary to the provisions of Section 5219 of the revised statutes of the United States, for that the shares of stock in national banking associations are immune from taxation by state or local taxing authority, except upon the express consent of the Congress of the United States, and such consent if any, is evidenced by the provisions of said section 5219 of the revised statutes, whereas said section, for the purpose of preserving the state power of taxation, is construed by the Supreme Court of the United States to consider the subject from the point of view of ultimate beneficial interest; that is, said section treats the stock interest, the stockholder, and the bank as one and subject to one taxation by the method which it provides.

That unless the assessment made pursuant to the provisions of sections 1321 and 1322 of the Supplement to the Code of Iowa is in truth and in fact an assessment against the property or tangible assets of plaintiff in error, then said sections of said Supplement to the Code of Iowa are unconstitutional and void, for that said sections provide that the property of the corporation shall not be otherwise assessed, while section

2 of Article 8 of the Constitution of Iowa provides "that the property of all corporations for pecuniary profit shall be subject to taxation the same as that of individuals."

Certain other allegations were included raising points arising solely under the provisions of statutes of the State of Iowa.

Thereafter the defendants in error filed a demurrer to said petition, such demurrer being a general equitable demurrer and challenging the constitutionality of certain state statutes counted on in said petition but not involved in this proceeding.

The District Court of Iowa in and for Polk County overruled said demurrer, and the defendants having elected to stand thereon entered its judgment and decree that "the assessment returned by the Assessor and amended and as approved by said Board of Review in the year 1919 of $687,-799.02 against the property or the capital stock, exclusive of real estate, of the Des Moines National Bank, shall be cancelled and set aside and held for naught, and that the Clerk of this Court shall send to the County Auditor and County Treasurer of Polk County, State of Iowa, a certified copy of this decree, and that the plaintiff have and recover of the defendants above named its costs herein taxed and found to be the sum of $....."

An appeal to the Supreme Court of Iowa from this judgment and decree was perfected by the defendants in error, and on February 12, 1921, the Supreme Court rendered its opinion reversing the judgment and decree of the trial court and holding that the defendants' demurrer should have been sustained. (Transcript, Page 90-95 inclusive.) Within due time a petition for rehearing was filed by plaintiff in error in said Supreme Court, and on September 28, 1921, said Supreme Court filed its supplemental opinion on rehearing adhering to its former opinion and overruling said petition for rehearing. To review this judgment of the Supreme Court of the State of Iowa the writ of error involved in this proceeding was sued out.

SPECIFICATION OF ERRORS.

1. The Supreme Court of Iowa erred in holding that in and by the assessment involved in said case securities of the United States of America, issued under the provisions of the act of Congress approved April 24, 1917, called the "First Liberty Bond Act," and the act of Congress of the United States approved September 24, 1917, commonly called "Second Liberty Bond Act," and the act of Congress of the United States approved December 23, 1913, commonly called the "Federal Reserve Act," were not subjected to assessment and taxation by the State of Iowa and its local authorities.

2. The Supreme Court of Iowa erred in holding that in truth and in fact by the method pursued the assessment involved in this case was not of the tangible assets of the plaintiff in error, including securities of the United States, or securities issued under authority of the United States Government.

3. The Supreme Court of the State of Iowa erred in holding that the said assessment involved in said case did not subject to taxation shares of stock in a national banking corporation, organized and existing pursuant to the acts of the Congress of the United States, at a greater rate than is imposed against moneyed capital in the hands of individual citizens of the State of Iowa.

4. The Supreme Court of the State of Iowa erred in holding that the said assessment involved in this case was not contrary to and in violation of the provisions of section 5219 of the Revised Statutes of the United States.

5. The Supreme Court of the State of Iowa erred in holding that the statutes of the State of Iowa, being sections 1321 and 1322 of the Supplement to the Code of Iowa, 1913, as administered and as disclosed by the record in this case, were not repugnant to the constitution, treaties and laws of the United States.

6. The Supreme Court of Iowa erred in rendering its decision of February 12, 1921, reversing the judgment of the District Court of Polk County, Iowa, rendered in said case.

7. The Supreme Court of the State of Iowa erred in denying the petition for rehearing filed in said case by plaintiff in error, and in rendering its decision on September 28, 1921, adhering to its former ruling reversing the judgment of the District Court of Polk County, Iowa, rendered in said case.

8. The Supreme Court of the State of Iowa erred in holding that the petition of plaintiff in error did not state facts sufficient to constitute a cause of action against the defendants in error.

9. The Supreme Court of Iowa erred in rendering its judgment and decree in said cause on to wit, November 18, 1921.

BRIEF OF THE ARGUMENT.

CONSTRUCTION OF TAX STATUTES.

"The general rule in reference to statutes imposing taxes is that they are to be strictly construed against the government, and in case of any doubt as to their meaning, they are to be given a liberal construction in favor of those subjected to taxation."

42 *Broadway vs. Anderson*, 209 Fed. 991-3;
United States vs. Wigglesworth, 2 Story 369;
Twine Co. vs. Worthington, 141 U. S. 468, 474.

ILLEGALITY OF ASSESSMENT BECAUSE IT SUBJECTS TO TAXATION SECURITIES ISSUED BY OR UNDER AUTHORITY OF THE UNITED STATES.

"Neither State Courts nor legislatures by giving a tax a particular name, or by the use of some form of words, can take away the duty of the Supreme Court to consider its real nature and effect."

C. O. & G. vs. Harrison, 235 U. S. 292;
G. H. & S. A. R. vs. Texas, 210 U. S. 217;
Home Insurance Company vs. New York, 134 U. S. 594;
Home Savings Bank vs. Des Moines, 205 U. S. 503;
New Orleans vs. Houston, 119 U. S. 265.

The assessment in this case is by statute limited to the aggregate amount of capital (not capital stock), surplus and undivided earnings, less the value of real estate of the corporation, as disclosed by statement thereof required to be furnished by the officers of the bank, and "the property of such corporation shall not be otherwise assessed." Sections 1321 and 1322, Supplement to the Code of Iowa, 1913.

The assessor under the terms of the state statutes performs only a ministerial act, and the assessment is limited to the aggregate of capital (not capital stock), surplus and undivided earnings.

First National Bank vs. Hayes, 186 Iowa, 892, 171 N. W. 715.

The assessment is not based upon any consideration of the franchise and good will, essential factors of the value of shares of stock, nor upon the actual market value of shares of stock, but on the contrary is laid upon tangible elements of the property of the bank indicating that the assessment is in substance an assessment upon the property of the corporation.

In re Assessment Stock Yards Company, 149 Iowa, page 5;
Home Savings Bank vs. Des Moines, Supra;
New Orleans vs. Houston, Supra.

"It is undoubted that the statute, (Section 5219 Revised Statutes) from the purely legal point of view, with the object of protecting the federal corporate agencies, which it created from state burdens, and securing the continued existence of such agencies despite the changing incidents of stock ownership, treated the banking corporations and their stockholders as different. But it is also undoubted that the statute for the purpose of preserving the state power of taxation, considering the subject from the point of view of ultimate beneficial interest, treated the stock interest, that is, the stock-

holder, and the bank, as one, and subject to one taxation by the methods which it provided."

Bank of California vs. Richardson, 248 U. S. 476.

Profits of corporations for pecuniary profit in Iowa shall be subject to taxation the same as that of individuals.

Section 2, Article 8, Constitution of Iowa.

The assessment in this case is predicated upon the existence of tangible elements of assets of plaintiff in error, and unless sections 1321 and 1322 of the Supplement to the Code of Iowa, 1913, are construed to affect the assessment of the property of the corporation as such, the same is conconstitutional because infringing section 2, Article 8 of the Iowa Constitution.

Iowa Loan & Trust Co. vs. Fairweather, 252 Fed. 605;
Hawkeye vs. French, 109 Iowa, at 588.

ILLEGALITY OF ASSESSMENT BECAUSE IT IS IN PART BASED UPON THE VALUE OF CAPITAL STOCK OF THE FEDERAL RESERVE BANK OF CHICAGO OWNED BY PLAINTIFF IN ERROR.

The plaintiff in error, as well as all national banking associations, was compelled to subscribe to the capital stock of the Federal Reserve Bank of Chicago.

Federal Reserve Bank Act, Chapter 6, Section 2;
38 Statutes, 251.

Federal Reserve Banks, including the capital stock and surplus therein, and the income derived therefrom, are exempt from federal, state, and local taxation, except taxes upon real estate.

Federal Reserve Bank Act, Chap. 6, Sec. 7, 38 Statutes, 258.

No consent to tax directly or indirectly the value of shares of stock in the Federal Reserve Bank of Chicago has been granted by the National Government, and the assessment involved in this case, in so far as it is based upon the value of stock owned by plaintiff in error in the Federal Reserve Bank of Chicago, is void.

Bank of California vs. Richardson, 248 U. S. 476.

ILLEGALITY OF ASSESSMENT BECAUSE OF DISCRIMINATION AGAINST NATIONAL BANKS.

National Banks are federal instrumentalities. Neither such banks nor the stock therein may be taxed without the consent of the federal government. Such consent as to stock in national banks is found in section 5219 of the Revised Statutes, and is granted upon the express condition that the taxation "shall not be at a greater rate than is assessed upon other

moneyed capital in the hands of individual citizens of such state."

The business of banking is permitted to be carried on in Iowa by private individuals, and the property of such individuals is subjected to taxation. Section 1321 Supplement to Code of Iowa, 1913.

Under the provisions of the Iowa Statutes, as well as general law, assets of a private banker invested in securities issued by or under the authority of the federal government may not be assessed for purposes of taxation. Section 1321 Iowa, Code Supplement, 1913.

A rate (of taxation) may be greater not only owing to a higher percentage of the levy, but in consequence of some method of assessment which would discriminate against national banks unfavorably.

People vs. Weaver, 100 U. S. 539.

The effect, if not the object, of section 5219 United States Revised Statutes was "to preclude the possibility of any such interpretation of the act of Congress as would justify states, while imposing the same taxation upon national bank shares as upon others in state banks, from discriminating against national bank shares in favor of moneyed capital not invested in state bank stock."

Boyer vs. Boyer, 113 U. S. 689;
People Ex Rel. Williams vs. Weaver, Supra;
Supervisors vs. Stanley, 105 U. S. 305;
Hills vs. Exchange Bank, 105 U. S. 319;
Evansville Bank vs. Britton, 105 U. S. 322;
Cummings vs. National Bank, 101 U. S. 153;
Mercantile National Bank vs. Mayor, et al., 121 U. S. 138;
Merchants National Bank vs. Richmond, 256 U. S. 635.

"Moneyed capital in the hands of individual citizens, as contemplated by section 5219 United States Revised Statutes, includes not only moneys invested in private banking properly so-called, "but investments of individuals in securities that represent money at interest and other evidences of indebtedness, such as normally enter into the business of banking."

Merchants National Bank vs. Richmond, Supra.

ARGUMENT.

Specification of Errors numbered 5 to 9, inclusive, are general in character and apply equally to all of the points presented by this argument.

Specification of Errors numbered 1 and 2 herein, question the legality of the assessment for the reasons:

1st. That thereby there is subjected to taxation securities issued by or under the authority of the United States, and

2nd. Because the assessment is in part based upon the value of capital stock of the Federal Reserve Bank of Chicago owned by plaintiff in error.

Specifications of Errors numbered 3 and 4 go to the illegality of the assessment because of discrimination against national banks.

For convenience we shall, in this argument, discuss the questions raised under said three groups.

ILLEGALITY OF ASSESSMENT BECAUSE IT SUBJECTS TO TAXATION SECURITIES ISSUED BY OR UNDER AUTHORITY OF THE UNITED STATES.

It is the contention of plaintiff in error that by the method pursued the assessment involved in this case is against the property of the plaintiff in error, and therefore subjects to taxation bonds issued by the United States Government in contravention of the constitution and laws of the United States.

The court will have observed from the provisions of Section 1322 of the Supplement to the Code of Iowa, 1913, hereinbefore set out, that the officers of the bank are required in each year to submit to the assessor a statement containing the information specified in Section 1321 of the Code Supplement.

A reference to the provisions of said Section 1321 will disclose that the information called for consists wholly of tangible assets of the bank, and especially by subdivision 4 of said section 1321, it is required that the statement disclose the actual value of bonds and stocks of every kind held as an investment or in any way representing assets, and the specific kinds and description thereof exempt from taxation. The assessment pursuant to the terms of these statutes is based upon capital, surplus and undivided earnings, less the value of the real estate of such bank, as disclosed by such statement.

Bearing these facts in mind we desire to present for the court's consideration the following propositions:

(1) In the construction of a statute of the character here involved, the court will look through the form to the substance of the transaction.

(2) The statute omits essential factors of the value of stock as such, thereby showing that it was not the actual value of the shares of stock as personal property which it sought to

assess, but the value of the physical or tangible property of the corporation as such.

(3) The provision of the statute that the property of the corporation shall not be otherwise assessed shows that it was the legislative intention to assess the property of the bank by the method prescribed.

(4) The method of assessment must be construed as in practical effect an assessment of the corporation, or its property, or section 1322 of the Code of Iowa is unconstitutional and void as contravening the provisions of Section 2 of Article 8 of the Constitution of Iowa, hereinbefore referred to.

While it is provided in Section 1322 of the Code Supplement that "shares of stock" of certain banks shall be assessed, the mere denomination in the statute of "shares of stock" is not necessarily controlling in this court in this cause.

As said by this Court in *C. O. & G. vs. Harrison*, 235 U. S. 292, "neither state courts, nor legislature, by giving a tax a particular name, or by the use of some form of words, can take away our duty to consider its real nature and effect."

To the same effect see *G. H. & S. A. R. Co. vs. Texas*, 210 U. S. 217.

In *Home Insurance Company vs. New York*, 134 U. S. 594, it is said:

> "As held in *McCulloch vs. Maryland*, 4 Wheat, 436, the states have no power by taxation to impede, burden or in any manner control the operation of the Constitution and laws enacted by Congress to carry into execution the powers vested in the general government, a doctrine which, applied in *Weston vs. Charleston*, 2 Pet. 449, annulled a tax levied by the authority of a law of South Carolina on stock issued for loans to the United States. Nor can this inhibition upon the states be evaded by any change in the mode or form of the taxation provided the same result is effected—that is, an impediment is thereby interposed to the exercise of a power of the United States. That which cannot be accomplished directly cannot be accomplished indirectly. Through all such attempts the court will look to the end sought to be reached, and if that would trench upon a power of the government, the law creating it will be set aside or its enforcement restrained."

In *Home Savings Bank vs. Des Moines*, 205 U. S. 503, the court had under consideration Section 1322 of the Iowa Code prior to its amendment, wherein it was provided: "Shares of stock" of State and Savings Banks, etc. shall be assessed to such banks. In declaring the duty of the court with respect to a construction of such law it is said:

> "The first step useful in the solution of this question is to ascertain with precision the nature of the tax in controversy and upon what property it was levied and that

step must be taken by an examination of the taxing law as interpreted by the Supreme Court of the State. A superficial reading of the law would lead to the conclusion that the tax authorized by it is a tax upon the shares of stock. The assessment is expressed to be upon shares of stock of state and savings banks, and loan and trust companies. But the true interpretation of the law cannot rest upon a single phrase in it. All its parts must be considered in the manner pursued by this court in *New Orleans vs. Houston,* 119 U. S. 265, 30 L. Ed. 411, and *Home Ins. Co. vs. New York,* 134 U. S. 594, with the view of determining the end accomplished by the taxation, and its actual and substantial purpose and effect.

Neither will the contention that the tax is the equivalent of a tax which is within the power of the State to lay suffice to sustain a tax which in practical effect contravenes the provisions of the Federal Constitution and laws. Thus in this case, although the State may have the authority to tax the shares of stock as the personal property of individuals, a tax which in practical effect is laid against the tangible property of the corporation cannot be sustained, for it is not what the state might do, but what the state by its law has done that controls in the construction of the statute.

See *Owensboro Nat. Bank vs. Owensboro,* 173 U. S. 664;

Home Savings Bank vs. Des Moines, 205 U. S. at 519.

Since the true interpretation of the law cannot rest upon a single phrase in it, let us examine the further provisions having to do with the tax or assessment involved in this case.

We have heretofore called the court's attention to the provisions of Section 1322, but at the expense of repetition we desire to point out in this connection certain of the specific provisions thereof. At the time of the assessment it is made the duty of the corporation to furnish the assessor a verified statement of the matter provided in Section 1321 of the Code Supplement. A reference to this section discloses that there is required to be shown in the statement (1) the amount of moneys, checks and other cash items owned by the bank; (2) the actual value of credits, bills receivable and the like, accruing to the Bank; (3) the amount of deposits and bills payable of the bank; (4) the actual value of bonds and stocks of every kind held as an investment, or in any way representing assets, and the specific kinds and description thereof exempt from taxation; (5) all other property pertaining to said business. It is next provided that such statement shall show the amount of capital stock and the surplus and undivided earnings of the corporation, and "the assessor *from such statement shall* fix the value of such stock based upon the capital, surplus and undivided earnings." There is a

provision for the deduction of the value of the real estate of such corporation, and a further provision that "the property of such corporation shall not be otherwise assessed."

It will be noted from these provisions of the statute that the amount of the assessment is required to be based upon three elements, that is to say, capital, surplus and undivided earnings. These three elements represent the tangible property of the corporation as such. There is no provision for a consideration of the value of the franchise of the corporation, the going concern value of the corporation, the good will value of the corporation, or any other intangible element, which are all essential factors of the value of the shares of stock as such. It will further be noted there is no provision for the ascertainment of the market value of the shares of stock as represented by sales or otherwise. On the contrary, the assessment as such is made only upon the tangible property of the corporation. In other words, the amount of the assessment is fixed by this tangible property, and no consideration is authorized to be given to any of the other elements of value of the shares of stock. This, it seems to us, demonstrates that the assessment and consequent tax is in reality laid upon the property of the corporation.

There can be no question that the very location of a banking institution may give added value to the shares of stock, for there could be institutions owning tangible property of equal value, one of which was located in the heart of a business section, convenient to its patrons, and the other located in a remote place, and yet the value of the shares of stock in the one would not be of necessity the equivalent of the value of the shares in the other. Furthermore, a bank which has been established for many years, and has the benefit of a satisfied patronage, as well as a reputation for fair and sound dealings, has by reason of its own business, and of the other facts enumerated, a value over and above the actual cash value of its tangible assets, and this value is reflected directly in the shares of stock whenever they are offered for sale.

By way of illustration let us assume a banking corporation organized with a capital stock of $100,000.00 which has been engaged in business for ten years, during which period of time it has earned a surplus of $50,000.00, thereby making its capital and surplus on January 1st, 1919, $150,000.00. Let us also assume that on December 31st, 1918, a banking corporation was formed with a capital stock of $100,000.00 and a paid in surplus of $50,000.00, thereby making its total capital stock and surplus on January 1st, 1919, $150,000.00, or the equal of the institution which had been in business for ten years and has earned its surplus. Can it in reason be said that the capital stock and surplus in these two instances fairly measure, or are intended to measure, the value of the shares

of stock in the two banks? One of such banks would have by its course of dealing established itself as a sound financial institution, surrounding itself with patrons, probably at great expense, and built up a business which is reflected in the value of its shares to the owners thereof, while the other might not have a dollar of deposits and might not have conducted a single business transaction, nor have a single patron, and yet the value of the shares of its stock would according to the construction of this statute (as applied by the Supreme Court of Iowa), equal that of established banking business.

This court in the case of *Home Savings Bank vs. Des Moines, supra,* called particular attention to the failure of the statute of the State of Iowa to include these elements within its terms, and relied thereon as an argument sustaining its conclusion that the tax imposed by that statute, prior to its amendment, was against the corporate property and not against the shares of stock. It is therein said:

> "The fair interpretation of the law is that the taxes are upon the property of the banks. In the valuation for taxation the asesssor is required to 'take into account the capital, surplus, and undivided earnings,' must be furnished with 'a verified statement of all matters provided by the preceding section,' which, by reference, is seen to be a detailed statement showing the assets of the bank. It is true that the assessor may resort to 'other information he can obtain,' but, although capital, surplus, and undivided earnings are expressly named, nothing is said of the franchise and good will, essential factors of the value of the shares, though not of the value of the assets of the bank. See *People ex rel. Union Trust Co. vs. Coleman,* 126 N. Y. 433, 12 L. R. A. 762, 27 N. E. 818. Moreover, the section closes with the words, 'and the property of such corporation shall not be otherwise assessed,' which plainly implies that the assessment already provided for is, in substance, an asesssment upon the property of the corporation. That the law was administered upon the theory that the tax was upon the property of the corporation is signally illustrated by the proceedings in these cases. The valuation was first made on the exact figures of the capital, surplus, and undivided earnings, deducting the holdings of United States Securities. Then, upon being advised that the deduction was erroneous, the assessor corrected the valuation by adding the value of the securities deducted. We therefore conclude that the substantial effect of the law is to require taxation upon the property, not including the franchise of the banks, and that the value of the shares, ascertained in a manner appropriate to determine the value of the

assets, is only the standard or measure by which the taxable valuation of that property is determined."

It is true that the statute then under consideration by the court has been amended by changing the phrase, providing for the assessment of the shares of stock to the bank, to a provision for the assessment of the shares of stock to the individual stockholders, but each of the reasons just hereinbefore stated as moving the Supreme Court to declare the tax in that case one upon corporate property still exists. Indeed, under the law as amended, the assessor is not authorized to resort to "other information he can obtain," as was the case before the amendment, but he is expressly limited to the tangible assets of the corporation in fixing the assessment.

First Nat. Bank vs. Hayes, 171 N. W. 715.

Therefore, the real effect of the law is to go into the internal affairs of the corporation as such, to pick out three elements of tangible property, and lay a tax upon the aggregate amount of the value of these three elements of tangible property. True, it is called in the one phrase a tax on the shares of stock, but the mere denomination of the tax as such, as we have hereinbefore pointed out, cannot, it seems to us, avoid the fact that under the provisions of the statute the tax is imposed on corporate property.

In *New Orleans vs. Houston*, 119 U. S. 265, the court said:

"It is well settled by the decisions of this court that the property of shareholders in their shares, and the property of the corporation in its capital stock, are distinct property interests, and, where that is the legislative intent clearly expressed, that both may be taxed. (Citing cases.)

In *Tennessee vs. Whitworth*, 117 U. S. 129, the Chief Justice delivering the opinion of the court said: 'In corporations four elements of taxable value are sometimes found: (1) franchise; (2) capital stock in the hands of the corporation; (3) corporate property; and (4) shares of the capital stock in the hands of the individual stockholders. Each of these is, under some circumstances, an appropriate subject of taxation; and it is no doubt within the power of a State, when not restrained by constitutional limitations, to assess taxes upon them in a way to subject the corporation or the stockholders to double taxation. Double taxation is, however, never to be presumed. Justice requires that the burdens of government shall, as far as is practicable, be laid equally on all, and if property is taxed once in one way, it would ordinarily be wrong to tax it again in another way, when the bur-

den of both taxes fall on the same person. Sometimes tax laws have that effect; but if they do, it is because the Legislature has mistakenly so enacted. All presumptions are against such an imposition.' But the question of legislative intent is always open upon the language of the exemption. In the present case the corporation is exempt by its charter from all other taxes and licenses of any kind whatever in excess of the sum of $40,000 per annum, and yet by Act No. 77, though the assessment is not to be made upon its capital stock, but upon the shares of shareholders, appearing upon its books, nevertheless, the tax so assessed is to be paid by the Company, although it is entitled to collect the amount so paid from the shareholder on whose account it is payable; but this payment by the Company is to be made irrespective of any dividends or profits payable to the shareholder out of which it might be repaid. That it is substantially a tax upon the corporation itself, is unequivocally shown by the subsequent clause—authorizes a deduction from the amount of taxes assessed to each share of its proportion of the direct property taxes paid by the Company as such under Sections 1 and 3, and of all exempt property belonging to the corporation. * * * Indeed, it is quite apparent from the language of the whole section, that, while nominally the taxes authorized are not to be assessed upon the capital stock of the corporation in the aggregate and as its property, yet in substance that is its effect. The taxes are assessed upon the actual shares as registered in the names of individual shareholders but are to be paid by the corporation, so that while the form and mode of taxation is changed, its substance remains as though assessed against the corporation by name."

How very applicable is this language of this court to the facts disclosed in the present case. It is true that while the tax charged under Section 1322 is required to be paid by the corporation under the penalties prescribed, such corporation has a right of action over against the stockholders, just as was true in the case of *New Orleans vs. Houston*, but neither the denomination of the tax as against shares of stock, nor the subsequent investment of a right of action to recover the amount paid can change the fact that the assessment is of the tangible property of the corporation.

Suppose that the shares of stock in this bank were in great demand in the market, at a price of five for one, and suppose that that market price was actually supported by the value of the corporate property, plus the value of its franchise, and good will. Could it then be said that the as-

sessment, based upon the value of its tangible property representing one-half of this amount, was in reality an assessment of the value of the shares of stock? It seems to us that the question affords its own answer.

It has not infrequently been the duty of the courts to declare taxes, laid by virtue of state laws, void when subjected to the proper tests of construction.

In *Brown vs. Maryland*, 12 Wheat. 419, it was held, that to tax the occupation of an importer was to tax the property imported.

In *Weston vs. Charleston*, 2 Pet. 449, it was held that to tax the income of United States Securities is to tax the securities themselves.

In *Dobbins vs. Erie County*, 16 Pet. 435, it was held, that to tax an income from an official position is to tax the office itself.

In *Almy vs. California*, 24 How. 169, it was held that to tax a bill of lading is to tax the thing transported and the receipts therefrom.

In *Northern C. R. Co. vs. Jackson*, 7 Wall. 262, it was held that a tax upon the interest is a tax upon the bond.

In *Cook vs. Pennsylvania*, 97 U. S. 566, it is held that a tax upon the auctioneer is a tax upon the goods sold.

In *Pollock vs. Farmers L. & T. Co.*, 157 U. S. 429, it is held that to tax the income of personal property and the rental of lands is to tax the property from which the income is returned.

In *G. H. & S. A. vs. Texas*, 210 U. S. 217, it is held that to tax the gross receipts of a Railway Company, derived from the carriage of passengers and freight in Interstate Commerce, is to tax Interstate Commerce.

In *C. O. & G. vs. Harrison*, 235 U. S. 292, it is held that a tax on gross production of coal is not a tax upon personal property consisting of coal at the mouth of the mine, but upon the right to engage in the business of mining.

All of these cases demonstrate that where the provisions of the law are subjected to the test declared by the decisions of the Supreme Court, the tax is not what it superficially appears to be, but that it is the actual practical effect of the imposition which controls in the determination of its validity or invalidity in the light of constitutional provisions.

It is true that where there is a doubt, the Legislature of a state is presumed to have intended to enact a valid law, and such a contention was expressly made in all of these cases which are just hereinbefore referred to. But this presumption cannot prevail when the result of the imposition is shown to have been other than is authorized by the Constitution and laws.

It is earnestly insisted that in the light of these authorities, the practical effect of this law is to tax the property of the Bank as such, including bonds of the United States Govern-

ment to the extent stated, and therefore, that such a tax is, because of the Constitution of the United States, and the provisions of the Federal laws, invalid.

That such is the effect of this law is demonstrated by the decision of the Iowa Supreme Court in the case of *"In Re Stock Yards Company,* 149 Iowa, page 5." In that case the assessor had returned an assessment against the Sioux City Stock Yards Company, a corporation, under the provisions of Section 1318 of the Iowa Code. By this section a corporation engaged in the business of merchandising is assessed at the average value of the stock of merchandise held by the corporation during the year, and it is provided that such a tax shall be in lieu of any tax on the shares of stock of the corporation. Objections to this assessment were made before the Board of Review by a Tax ferret, who insisted that the assessment in the case should be upon the shares of stock of the individual stockholders under the provisions of Section 1323 of the Iowa Code, but this contention was ignored by the Board of Review, and the assessment reported by the Assessor was confirmed. Thereupon the objectors took an appeal to the District Court under the terms of Section 1373 of the Iowa Code. On the hearing of this appeal before the District Court it was contended that the court was without jurisdiction to make an assessment against the individual stockholders, for the reason that no assessment had theretofore been returned against them, and consequently there was nothing from which an appeal could be prosecuted. The court said:

> "But the point made for the appellee on the interpretation of the statute is that it does not authorize a new assessment against stockholders where the assessor and Board of Review have assessed the property to the corporation itself as a merchant. This point we think is not well taken. The assessment to the stockholders on the value of their shares of stock *is in practical effect an assessment on the corporation.* The valuation of the property in either case is on the same basis, and whether the taxes paid by the corporation are levied against it on its own property or as representative of the stockholders from whom the corporation is authorized to collect it is it seems to us quite immaterial. In either event the corporation must pay the tax. If as a result of an assessment made on shares of stock the total amount of taxes to be paid by the corporation is greater than that assessed against it directly by the assessor and board of review, then the tax is increased. * * * The result of the taxation by assessment to the stockholders on the value of their shares of stock would be to increase the taxes to be paid on account of the property of the corporation and the amount of such taxes would still be pay-

Indeed in its opinion on rehearing in this case the Supreme Court of Iowa states: "This contention rests upon the argument that the taxation of shares of stock to the shareholders is the practical equivalent of the taxation of corporate assets to the corporation; that two formal methods of taxation are possible and that the doing of one is only an indirect method of doing the other. Whichever method of taxation be adopted, the burden of the tax must ultimately fall upon the shareholders. It is to be conceded that the two methods are ordinarily equivalent in practical ultimate result. It is to be conceded also that if a direct tax were levied against the corporation itself upon its assets, it could not be levied upon securities exempt under the Federal statute."

We have then a recognition that the taxation involved in this case is in practical effect a tax upon the assets of plaintiff in error, including United States Bonds and securities issued under the authority of the United States. We have a construction of the statutes of Iowa involving the taxation of corporations or their stock whereby in order to sustain the jurisdiction of the court, in the case then at hand it was held that the assessment "is in practical effect an assessment on the corporation." This being true, the principle announced in *McCulloch vs. Maryland*, 4 Wheaton, 436, and reiterated in *Home Savings Bank vs. Des Moines, Supra*, that neither the mode nor the form of the taxation will suffice to sustain it if considering all its parts it is determined that the end accomplished by the taxation, or its actual and substantial purpose and effect is to subject the securities of the United States Government, or those issued under its authority, to the payment of a tax burden of the state, is peculiarly applicable, and it is exceedingly difficult for us to conceive a basis upon which such taxation may be sustained.

We do not overlook the distinction between the assets of the corporation as property, and the capital stock of the corporation in the hands of its shareholders as property, which is pointed out in *Van Allen vs. Assessors*, 3 Wall. 573, although we may state in passing that an examination of that case will disclose that the discussion there employed by the court was not necessary to a decision of the case. But there was not involved in *Van Allen vs. Assessors, Supra*, a statute basing the assessment upon the tangible assets of the corporation. The provision of the act involved therein was that the tax on the shares of stock of national banks should not exceed the par value thereof. Neither have we been able to discover any case decided by this court which sustains an assessment based upon the aggregate value of capital, surplus and undivided earnings, such as is involved in this case.

The court has sustained assessments based upon "par value" in the following cases:

First National Bank vs. Kentucky, 9 Wall. 353;
First National Bank of Aberdeen vs. Chehalis County, 166 U. S. 440;
Stanley vs. Board of Supervisors, 121 U. S. 535;
Evansville National Bank vs. Britton, 105 U. S. 322;
Mercantile National Bank of New York vs. Mayor, etc., 121 U. S. 138;
Pelton vs. Commercial National Bank, 101 U. S. 143;
People vs. Commissioners, 71 U. S. 244;
Bank of Commerce vs. Tenn., 161 U. S. 134;
Cleveland Trust Company vs. Lander, 184 U. S. 111;
Farrington vs. Tenn., 95 U. S. 679.

This court has sustained assessments of stock where such assessments were based upon "market value" in the case of *Hepburn vs. School Directors*, 23 Wall. 480.

Assessments based upon "true value in money or selling price," or "actual value," were involved in the following cases:

Cummings vs. Merchants National Bank, 101 U. S. 153;
Supervisors vs. Stanley, 105 U. S. 305;
People vs. Commissioners of Taxes, 94 U. S. 415.

Instead of having an assessment here of stock as such in the hands of individual shareholders measured by its market or par value, or its actual worth as such stock, we have a tax computed upon the aggregate of tangible property as such of the corporation, which is by the Supreme Court of Iowa conceded to be in practical and substantial effect a tax upon the assets of the corporation. Indeed we earnestly insist that this concession truly reflects not only the purpose of the legislature in the enactment of the statutes of Iowa hereinbefore referred to, but the policy of the state as declared by its constitution, for, if the court will bear in mind, by the very provisions of the statutes under which this assessment was made it is required that the statement, which forms the basis of the assessment, should specifically set forth that part of the assets of the corporation which were invested in exempt securities, and this provision of the statute conforms it perfectly to the provisions of section 2 of Article 8 of the Constitution of Iowa, which provides:

> "The property of all corporations for pecuniary profit shall be subject to taxation the same as that of individuals."

The Supreme Court of Iowa in *Hawkeye vs. French*, 109 Iowa, at page 588, has held that this provision of the Constitution is not a mere grant of power to the legislature, but is a specific direction mandatory in character, that the property of corporations as such shall be taxed.

This contention we feel is strongly supported by the recent decision of this court in *Bank of California National Association vs. Richardson*, 248 U. S. 476, where this court said:

> "It is undoubted that the statute, from the purely legal point of view, with the object of protecting the Federal corporate agencies which it created from state burdens, and securing the continued existence of such agencies despite the changing incidents of stock ownership, treated the banking corporations and their stockholders as different. But it is also undoubted that the statute for the purpose of preserving the state power of taxation, considering the subject from the point of view of ultimate beneficial interest, treated the stock interest, that is, the stockholder, and the bank, as one, and subject to one taxation by the methods which it provided."

An analysis of that case will show that it arose from an assessment against the stockholders of the Bank of California National Association, in which assessment was included an item of $625,546.30, representing the value of 2,501 shares of the D. O. Mills National Bank, which were owned by the Bank of California National Association. Under the authority of *Bank of Redemption vs. Boston*, 125 U. S. 60, the Bank of California was assessed as a stockholder in the D. O. Mills National Bank, to the extent of its stock interest. Thereafter, the stockholders of the Bank of California were assessed, and included in the aggregate of the assets of the bank of California, upon which such assessment was based, was the value of the stock which it owned in the Mills Bank. The court held that under Section 5219 of the Revised Statutes it was proper for the state authorities to tax the Bank of California on account of its ownership of stock in the Mills Bank, but that such assessment exhausted the power of the State with respect to any tax on that property. In other words, it is only by virtue of the consent of Congress that shares in a National Bank, a Federal agency, may be taxed at all, and, the state having taxed to the Bank of California an amount on account of its ownership of shares in the Mills National Bank had exhausted all power with respect to those shares and thereafter could not tax the shares in the Bank of California where the value of such latter shares was made up of the stock owned by that institution in the Mills National Bank. Stated otherwise, so far as the taxation of the shareholders of the Bank of Califor-

nia was concerned, the shares owned by it in the Mills National Bank were in the same situation as if Congress had never granted the power of the state to assess it at all. The contention was raised that the taxation in each instance was valid because a taxation of different persons, the Bank of California as an entity on the one hand, and the stockholders of the Bank of California as individuals on the other, but the court in denying this contention held that for the purpose of preserving the state power of taxation, the statute of Congress considered the subject from the point of view of ultimate beneficial interest, that is, it treated the stock interest, the stockholders, and the bank as one.

Now let us apply this holding to the situation at hand. The effort to tax the shares of stock owned by individuals in the Bank of California National Association, was overruled, because that assessment included as a part of the value of such shares the assets of the Bank of California National Association, consisting, among other things, of shares of stock in the Mills National Bank. The shares of stock in the latter bank could only be assessed by virtue of Section 5219 of the Revised Statutes, and such assessment having been made to the individual holders of the shares in the Mills National Bank including the Bank of California National Association, as an individual, the power to consider such property as an element in further assessing the shares of the Bank of California, a National Association, was denied. In other words, the consent to assess the shares of Mills National Bank, a Federal instrumentality, having been once employed, such shares were immune from consideration in attempting to fix any other assessment even as against the stockholders in the Bank of California National Association.

To state it again, the consent of Congress to assess the shares of stock of the Mills National Bank, a Federal agency, having been utilized, those shares were thereafter in exactly the same situation as any interest in any other Federal agency, the consent to tax which had not been granted.

Now in this case the assets, comprising the value upon which the assessment is based, consisted of Federal securities, as to which no consent to tax has been given, just as in the *Bank of California* case the assets consisted of shares in a Federal agency, the consent to tax which had been exhausted and thereby withdrawn.

It will not do to say that that case was grounded upon a double or second taxation of the same value, because the Supreme Court in the course of the opinion says:

"We do not stop to point out the double burden resulting from the taxation of the same value twice which the assessment manifested, as to do so could add no cogency to the violation of the one power to tax by the one prescribed method

conferred by the statute, and which was the sole measure of the state authority."

There was just as great a distinction between the property owned by the Bank of California National Association, although such property was shares in a National Bank, and the stock owned by the shareholders of the Bank of California National Association, as there is in this case between the Federal securities owned by the Des Moines National Bank and the stock owned by its shareholders. There was just as great a difference of property right. Every single argument advanced by appellee in this case was equally applicable in that case, and apparently was made, and yet the court denied the right to tax those shares where the value was made of an interest in a Federal agency. We say, the arguments advanced here were there advanced, and this is apparent from the dissenting opinion filed in that case where *Van Allen vs. Assessors, Supra,* and the other cases of like tenor were cited in support of the dissent, but regardless of the existence of those cases, the court held to the rule for which we are contending, and this is the last expression of the Supreme Court of the United States on the subject.

It is true the court did not in terms overrule *Van Allen vs. Assessors, Supra,* and to have done so would have been erroneous because the judgment in the *Van Allen* case was that the decree of the Court of Appeals of New York must be reversed on the ground that the enabling act of the state passed March 9, 1865, did not conform to the limitations by the act of Congress passed June 3, 1864, organizing the National banks and providing for their taxation.

We therefore insist that upon the record in this case, and under the authorities heretofore cited, the fair interpretation of the law is that the taxes are upon the property of the banks, and this being true the assessment, in so far as it is based upon the value of securities issued by or under the authority of the United States, is void.

ILLEGALITY OF ASSESSMENT BECAUSE IT IS IN PART BASED UPON THE VALUE OF CAPITAL STOCK OF THE FEDERAL RESERVE BANK OF CHICAGO OWNED BY PLAINTIFF IN ERROR.

Moreover it is disclosed by the record that the assessment in this case was based, at least in part, upon the value of the capital stock of the Federal Reserve Bank of Chicago, which was at the time owned by plaintiff in error. Under the terms of the Federal Reserve Act, (Chapter 6, Section 2, 38 Statutes, 251,) plaintiff in error, a national banking association, was within a limit of time required to accept its provisions including the obligation to subscribe to the capital stock of such Federal Reserve Bank in a sum equal to six per centum of the paid up capital and surplus of plaintiff in error. A failure so

to do under the terms of that act automatically operated in the forfeiture of all of its rights, privileges and franchises as such national banking association. It therefore appears that in order to continue as a national bank, plaintiff in error was by law required to acquire certain shares of stock in such Federal Reserve Bank. Whether it was willing so to do or not is beside the question, because it is apparent that it was the intention of the Congress of the United States that the stock in the Federal Reserve Banks should be owned by national banking associations and state banks, who were admitted to membership. This intention is apparent not only from the provisions of the act to which we have already made reference, but also to the fact that no stock in the Federal Reserve Bank should be open to public subscription unless and until national banking associations and member banks could not and did not subscribe for the requisite amount. Now bearing in mind this apparent intention of the Congress, and looking to the provisions of Section 7 of the Federal Reserve Act (38 Statutes, 258), it is found that there is an express prohibition against Federal, state or local taxation of such Federal Reserve Banks, including the capital stock and surplus therein and the income derived therefrom. Certainly Congress did not intend this exemption to be meaningless. Certainly too it must have intended the exemption to operate as to shares of stock in such Federal Reserve Banks owned and held by national banking associations, because such exemption is stated in connection with the requirement that such stock should be acquired by such national banking associations. Now without an expressed consent national banking associations could not as such stockholders be taxed upon the stock ownership in the Federal Reserve Bank. Consequently the inclusion of the exemption as such, if the same is to be limited merely to the national banking association or member bank owning the same, was mere surplus language. But in view of the limited return permitted by the act to be paid to the owners of such stock, is it not the more reasonable interpretation of the provisions of that act that Congress intended that such investment in such Federal Reserve Bank stock should be relieved from the burdens of taxation imposed either directly or indirectly, and if this is the true construction then how can it be that an assessment, considered to "be the equivalent in practical ultimate result to the assessment of the property or the assets," or "in practical effect an assessment on the corporation," can stand?

Indeed the language of this court in *Bank of California vs. Richardson, Supra*, when fairly considered, fully and completely sustains this contention.

We therefore respectfully insist that the Spreme Court of Iowa erred in its opinion, judgment and decree, and that the same should for the reasons heretofore advanced be reversed.

ILLEGALITY OF ASSESSMENT BECAUSE OF DISCRIMINATION AGAINST NATIONAL BANKS.

Assuming now for the purpose of this argument, but not conceding the fact, that the assessment is laid against the shares of stock of the bank in the hands of the individual owners thereof, nevertheless under the allegations of the petition, which are admitted by the demurrer, the assessment is based to the extent stated in the petition on a value arising from the ownership of federal securities. It is because of the inclusion in the assessment of this element of value that we claim the assessment to be void, because it contravenes the provisions of Section 5219 of the Revised Statutes. With this section of the Revised Statutes the court is no doubt familiar, and the contention just asserted arises from a consideration of the first restriction on the power of the State, or its subdivisions, to tax shares of stock in a National Bank as contained in said section which is as follows:

> "That the taxation shall not be at a greater rate than is assessed upon other moneyed capital in the hands of individual citizens of such state."

The particular violation of this provision of the Federal Act, upon which reliance is placed by appellee arises from the fact that under the laws of the State of Iowa, persons designated as private bankers are engaged in the banking business in competition with appellee, and that the method of taxation of such private bankers as prescribed by the state statutes precludes the assessment for taxation of the value of federal securities in their hands.

There are allegations of fact contained in the petition that at the time of this assessment there were in Polk County, Iowa, and within the City of Des Moines, at least four such private bankers whose business was the receiving of deposits subject to check, on certificates, receipts, or otherwise, or the selling of exchange, or the conducting of a banking business in competition with appellee. As we have heretofore pointed out, all of the assessments of property for persons made by the Assessors, were, pursuant to law, placed before the Board of Review. From the assessment of at least some, if not all of these private bankers, it is disclosed that they possessed Liberty Bonds on the first day of January, 1919.

From the provisions of sections 1321 and 1322 of the Code Supplement it will be observed that the assessment of National Banks, and also private banks, is based solely upon a statement properly verified, required by the statute to be furnished by the property owner to the Assessor, and each of the statements, under the terms of the statutes, is required to contain the same information. Therefore there is a recognition

by the very terms of the statutes of the similarity of the business in which the two classes of property owners are engaged. By subdivision four of Section 1321 the statement is required to contain the actual value of bonds held and the specified kinds and description thereof exempt from taxation.

The provisions of the acts of Congress under which the securities involved in this case were issued, (and of which this court will take judicial knowledge, but which for the convenience of the court are set forth in the petition in this case), provide that the principal and interest of such bonds shall be exempt from all taxation except estate or inheritance taxes imposed by the authority of the United States, or its possessions, or by any state or local taxing authority.

Of course this provision, speaking generally, is but a declaration of law, for it has long been settled for reasons of public policy that the securities of the general government as such, may not be subjected to taxation by virtue of State authority. Therefore, it necessarily follows that these federal securities in the hands of individuals engaged in business as private bankers could not be subjected to taxation by the State or its poliical subdivision, and from this fact it is claimed in the petition there results a discrimination in violation of the restriction imposed upon the authority to lay the taxes by the terms of Section 5219 hereinbefore referred to.

If we can demonstrate to the court that under the general scheme of taxation, existing by virtue of the statutes of the State of Iowa, such a discrimination results, then it seems to us we will have shown that the petition properly stated a case, and that the demurrer was properly overruled by the trial court.

There are two phases of the question which probably will require discussion for a correct solution. The first is involved in the claim that a difference in the method of assessment or valuation of property for purpose of taxation will violate the terms of this restriction just the same as a different rate of levy would do when applied to the ascertained value of property. And the second arises from a correct understanding of the term "other moneyed capital in the hands of individual citizens of the state" as contained in the restriction referred to.

This court in *People vs. Weaver*, 100 U. S. 539, said:

> "A rate may be greater, not only owing to a higher percentage of the levy, but in consequence of some method of assessment or taxation, which would discriminate against National Banks unfavorably."

In *Boyer vs. Boyer*, 113 U. S. 689, the court said:

> "But the Act of 1864 was so far modified by that of February 10, 1868, that the validity of such state taxation

was thereafter to be determined by the inquiry, whether it was at a greater rate than was assessed upon other moneyed capital in the hands of individual citizens, and not necessarily by a comparison with the particular rate imposed upon shares in state banks. The effect, if not the object of the latter Act was to preclude the possibility of any such interpretation of the Act of Congress as would justify states, while imposing the same taxation upon national bank shares as upon shares in state banks, from discriminating against national bank shares, in favor of moneyed capital not invested in State bank stock. At any rate, the Acts of Congress do not now permit any such discrimination."

In *People, ex rel. Williams vs. Weaver,* 100 U. S. 539, it is said:

"This provision of the national bank law, that state taxation on the shares of the bank shall not be at a greater rate than is assessed on other moneyed capital in the hands of citizens of the state, has reference to the entire process of assessment and includes the valuation of the shares as well as the ratio of percentage charged on such valuation. A statute of a state, therefore, which establishes a mode of assessment by which the shares of the national banks are valued higher, in proportion to their real value, than other moneyed capital is in conflict with the Act of Congress, though no greater percentage is levied on that valuation than on the valuation of other moneyed capital."

To the same effect are the decisions of this Court in the following cases:

Supervisors vs. Stanley, 105 U. S. 305, 26 L. Ed. 1044;
Hills vs. Exchange Bank, 105 U. S. 319, 26 L. Ed. 1052;
Evansville Bank vs. Britton, 105 U. S. 322, 26 L. Ed. 1053;
Cummings vs. National Bank, 101 U. S. 153, 25 L. Ed. 903;
Pelton vs. Com'l Nat. Bank, 101 U. S. 143, 25 L. Ed. 901;
Stanley vs. Albany County, 121 U. S. 535; 30 L. Ed. 1000;
McHenry vs. Downers, (Calif.) 45 L. R. A. 737;
Mercantile Nat. Bank vs. New York, 121 U. S. 138.

In *Merchants National Bank vs. Richmond, Supra,* this court said:

"The Supreme Court of Appeals entertained the view that the purpose of Section 5219, Rev. Stat., was confined to the prevention of discrimination by the states in favor of state banking associations as against national banking associations, and that since none such is shown here, there was no repugnance to the Federal statute. This, however, is too narrow a view of Section 5219. It traces its origin to Section 41 of the Act of June 3, 1864, (Chap. 106, 13 Stat. at L. 99, 111, 112) in which, besides the restriction that state taxation of the shares of national banking associations should not be at a greater rate than that assessed upon other moneyed capital in the hands of individual citizens of such state, there was an express proviso that the tax should not exceed the rate imposed upon the shares of state banks. But this was modified by Act of February 10, 1868, (Chap. 7, 15 Stat. at L. 34), in a manner which, as was pointed out in *Boyer vs. Boyer*, 113 U. S. 689, 691, 692, precluded the possibility of an interpretation permitting the states, while imposing the same taxation upon national bank shares as upon shares in state banks, to discriminate against national bank shares in favor of moneyed capital not invested in state bank stock."

In view therefore of these unequivocal pronouncements by this Court we take it as established beyond question that if there is a difference in the method of assessment of the value of the shares of stock in national banks when compared to the assessment of moneyed capital in the hands of individuals, and such difference discriminates against the shares of stock in the national banks, there results a violation of the terms of the federal statute referred to.

So that we proceed to a consideration of the other question in this case, and that is, what is meant by the term "other moneyed capital in the hands of individuals." This question has been frequently before the courts both state and federal so that there really ought to be little, if any difficulty presented thereby in this case.

The most exhaustive consideration of the question is contained in the decision of this Court in the case of *Mercantile Nat. Bank vs. Mayor, etc.*, 121 U. S. 138, 30 L. Ed. 895, where after carefully reviewing all of the authorities theretofore rendered on the subject, it is said:

"The key to the proper interpretation of the Act of Congress is its policy and purpose. The object of the law was to establish a system of national banking institutions, in order to provide a uniform and secure currency for the people and to facilitate the operation of the Treasury of

the United States. The capital of each of the banks in this system was to be furnished entirely by private individuals; but, for the protection of the government and the people, it was required that this capital so far as it was the security for its circulating notes, should be invested in the bonds of the United States. These bonds were not subjects of taxation; and neither the banks themselves, nor their capital, however invested, nor the shares of stock therein held by individuals, could be taxed by the States in which they were located without the consent of Congress, being exempted from the power of the States in this respect, because these banks were means and agencies established by Congress in execution of the powers of the Government of the United States. It was deemed consistent, however, with these national uses, and otherwise expedient, to grant to the states the authority to tax them within the limits of a rule prescribed by the law. In fixing those limits it became necessary to prohibit the states from imposing such a burden as would prevent the capital of individuals from freely seeking investment in institutions which it was the express object of the law to establish and promote. The business of banking, including all the operations which distinguish it, might be carried on under state laws, either by corporations or private persons, and capital in the form of money might be invested and employed by individual citizens in many single and separate operations forming substantial parts of the business of banking. A tax upon the money of individuals, invested in the form of shares of stock in national banks, would diminish their value as an investment and drive the capital so invested from this employment, if at the same time similar investments and similar employments under the authority of state laws were exempt from an equal burden. The main purpose, therefore, of Congress, in fixing limits to state taxation on investments in the shares of national banks, was to render it impossible for the state, in levying such a tax, to create and foster an unequal and unfriendly competition, by favoring institutions or individuals carrying on a similar business and operations and investments of a like character. The language of the Act of Congress is to be read in the light of this policy.

Applying this rule of construction we are led, in the first place, to consider the meaning of the words 'other moneyed capital,' as used in the statute. Of course it includes shares in national banks; the use of the word 'other', requires that. If bank shares were not moneyed capital the word 'other' in this connection would be without significance. But 'moneyed capital' does not mean all

capital the value of which is measured in terms of money. In this sense, all kinds of real and personal property would be embraced by it, for they all have an estimated value as the subjects of sale. Neither does it necessarily include all forms of investment in which the interest of the owner is expressed in money. Shares of stock in railroad companies, mining companies, manufacturing companies, and other corporations, are represented by certificates showing that the owner is entitled to an interest, expressed in money value, in the entire capital and property of the corporation, but the property of the corporation which constitutes its invested capital may consist mainly of real and personal property, which in the hands of individuals, no one would think of calling moneyed capital and its business may not consist in any kind of dealing in money, or commercial representatives of money.

So far as the policy of the government in reference to national banks is concerned, it is indifferent how the states may choose to tax such corporations as those just mentioned, or the interest of individuals in them, or whether they should be taxed at all. Whether property interests in railroads, in manufacturing enterprises, in mining investments, and others of that description, are taxed or exempt from taxation, in the contemplation of the law, would have no effect upon the success of national banks. There is no reason, therefore, to suppose that Congress intended, in respect to these matters to interfere with the power and policy of the States. The business of banking, as defined by law and custom, consists in the issue of notes payable on demand, intended to circulate as money where the banks are banks of issue; in receiving deposits payable on demand; in discounting commercial paper; making loans of money on collateral security; buying and selling bills of exchange; negotiating loans, and dealing in negotiable securities issued by the government, state and national and municipal and other corporations. These are the operations in which the capital invested in national banks is employed, and it is the nature of that employment which constitutes in the eye of this statute 'moneyed capital.' Corporations and individuals carrying on these operations do come into competition with the business of national banks and capital in the hands of individuals thus employed is what is intended to be described by the Act of Congress. That the words of the law must be so limited appears from another consideration; they do not embrace any moneyed capital in the sense just defined, except that in the hands of individual citizens. This excludes moneyed capital in the

hands of corporations, although the business of some corporations may be such as to make the shares therein belonging to individuals moneyed capital in their hands, as in the case of banks. A railroad company, a mining company, an insurance company, or any other corporation of that description, may have a large part of its capital invested in securities payable in money, and so may be the owners of moneyed capital; but, as we have already seen, the shares of stock in such companies held by individuals are not moneyed capital.

The terms of the Act of Congress, therefore, include shares of stock of other interests owned by individuals in all enterprises in which the capital employed in carrying on its business is money, where the object of the business is the making of profit by its use as money. The moneyed capital thus employed is invested for that purpose in securities by way of loan, discount, or otherwise, which are from time to time, according to the rules of the business, reduced again to money and reinvested. It includes money in the hands of individuals employed in a similar way, invested in loans, or in securities for the payment of money, either as an investment of a permanent character, or temporarily with a view to sale or repayment and reinvestment. In this way the moneyed capital in the hands of individuals is distinguished from what is known generally as personal property."

To the same effect is the case of *Newark Banking Co. vs. Mayor*, 121 U. S. 163, 30 L. Ed. 904, and *Aberdeen Bank vs. Chehalis County*, 166 U. S. 440, at 456, 41 L. Ed. 1076.

Again in the recent case of *Merchants National Bank vs. Richmond, Supra*, it is said:

> "By repeated decisions of this court, dealing with the restriction here imposed, it has become established that while the words 'moneyed capital in the hands of individual citizens' do not include shares of stock in corporations that do not enter into competition with the national banks, they do include something besides shares in banking corporations and others that enter into direct competition with those banks. They include not only moneys invested in private banking, properly so called, but investments of individuals in securities that represent money at interest and other evidences of indebtedness such as normally enter into the business of banking."

Now let us apply these direct holdings of this court to the allegations of the petition in this case. In *Mercantile Nat. Bank vs. Mayor, Supra*, it is said: "The business of banking,

as defined by law and custom, consists in the issue of notes payable on demand, intended to circulate as money where the banks are banks of issue; in receiving deposits payable on demand; in discounting commercial paper; making loans of money on collateral security; buying and selling bills of exchange; negotiating loans, and dealing in negotiable securities issued by the government, state and national, and municipal and other corporations. These are the operations in which the capital invested in national banks is employed, and it is the nature of that employment which constitutes it in the eye of the statute 'moneyed capital.' Corporations and individuals carrying on these operations do come into competition with the business of national banks, and capital in the hands of individuals thus employed is what is intended to be described by the Act of Congress."

Private bankers are described in Section 1321 of the Supplement to the Code of Iowa as persons, a part of whose business is the receiving of deposits subject to check, on certificates, receipts, or otherwise, or the selling of exchange, and under the allegations of fact in the petition it is disclosed that the particular persons referred to as private bankers in Des Moines were engaged in the very business defined by the Supreme Court as constituting competition with the business of national banks. Therefore, it seems to us to follow irresistibly that the allegations of the petition here as aided by the statutes of the state set forth, demonstrate that the private bankers referred to fall within the definition of the Supreme Court of the United States when it construed the phrase of this law now under consideration, and having demonstrated that under the allegations of the petition there is disclosed a difference in the method of the assessment of the property of such private bankers, there is thereby established an infringement of the provisions of Section 5219, in that moneyed capital in the hands of individual citizens of the State of Iowa is subjected to a different rate of taxation than the shares of stock of national banks, resulting in the ultimate laying of a greater charge on the latter. This being true, it seems to us there can be no substance in the contention that the petition here does not state a cause of action, and we respectfully urge that the demurrer was properly by the trial court overruled on this theory.

The Supreme Court of Iowa, however, in its original opinion in this case (Transcript 92) disposed of all of these questions upon the authority of *Hannan, County Auditor vs. First National Bank*, 269 Fed. 527. That case differed in many respects from this one, and we think is clearly erroneous because it is therein held:

"The fact that individuals, such as private bankers, may deduct from the amount of their assessable property the amount of United States securities held by them, is not a discrimination forbidden by section 5219, as against the owners of national bank shares, assessed at their full value, because section 5219, in requiring other moneyed capital to be assessed at an equal rate, only refers to such moneyed capital as the state has the power to tax, and not to that property which the national power has exempted from taxation."

If this is the true rule then the decision of this court in *Van Allen vs. Assessors, Supra,* was wrong because there the judgment of the Court of Appeals of New York was reversed on the ground that "the banks of the state are taxed upon their capital, and although the act provides that the tax on the shares of national banks shall not exceed the par value, yet inasmuch as the capital of the state banks may consist of the bonds of the United States which are exempt from state taxation, it is easy to see that this tax on the capital is not an equivalent for a tax on the shares of the stockholders."

Moreover the later decisions of this court in *Mercantile National Bank vs. Mayor,* 121 U. S. 138, and in *Merchants National Bank vs. Richmond, Supra,* clearly show the error of the Circuit Court of Appeals in *Hannan vs. First National Bank, Supra.* Again there was not involved in *Hannan vs. First National Bank* any question of the ownership of stock in the Federal Reserve Banks under the terms of the Federal Reserve Act.

We realize that questions of state law are controlled by the decision of the court of last resort of the state as a rule, so in this case we must accept the decision of the Supreme Court of Iowa holding a statute passed by the Legislature of Iowa directing the deduction of the amount of Federal securities owned by banks in the assessment of its property or stock as unconstitutional because of a defect in the title of the act, although no such question, as is apparent from this record, was ever suggested by counsel or argued to the court. But we do not understand that this court is bound by the interpretation of the Supreme Court of Iowa of the statutes of Iowa, or the administration of the statutes of Iowa so far as the same are claimed to infringe rights arising under the Constitution and laws of the United States. Thus we claim that in each of the instances which we have advanced in the course of this argument, there are presented questions for the original consideration of this court, which the correct decision of which we feel will compel the court to enter an order reversing the opinion, judgment and decree of the Supreme Court of Iowa.

We believe there has been a strained effort on the part of the Supreme Court of Iowa to sustain the assessment under attack in this case, and this in the face of the general rule that wherever doubts exist in taxing statutes the same should be resolved in favor of the taxpayer. We apprehend the argument will be made that the statutes of Iowa under consideration in their present form were passed, or at least were amended after the decision of this court in *Home Savings Bank vs. Des Moines, Supra;* but it seems to us that having in mind the only changes in language which have been made since the pronouncement of that decision, and having in mind the very full and elaborate discussion of the reasons employed by this court in arriving at its conclusion that the statutes of Iowa at that time resulted in the assessment of the assets of the bank as such, and not the stock of the stockholders as such, although the statute purported to tax shares of stock, that the very fact of the failure of the legislature of the State of Iowa to fully conform its statutes to the reasoning of this court in that case demonstrates that our contention as to the effect of such statutes, and therefore as to the validity of the assessment, laid thereunder, must be sustained.

We respectfully submit that justice requires that the contentions of plaintiff in error as to all of these questions should be sustained.

J. G. GAMBLE, AND
R. L. READ,
Counsel for Plaintiff in Error.

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AUTHORITIES

NO. 626.

IN THE

Supreme Court of the United States

OCTOBER TERM, 1923.

DES MOINES NATIONAL BANK, PLAINTIFF IN ERROR,

V.

THOMAS FAIRWEATHER, MAYOR, ET AL., DEFENDANTS IN ERROR.

STATEMENT OF FACTS.

This is a proceeding in error to the Supreme Court of Iowa to review the judgment of that Court, reversing the judgment and decree of the District Court of Polk County, Iowa, which fixed the assessment of the shares of stock of the Des Moines National Bank, a corporation organized under the laws of Congress and having its principal place of business in Des Moines, Iowa, herein called "Plaintiff in Error," for the purposes of general taxation in the year 1919.

The Constitution and Laws of the State of Iowa provide that the property of all corporations shall

be subject to the same uniform system of taxation. It is provided by the Constitution of Iowa, Article 8, Section 2 as follows:

> "The property of all corporations for pecuniary profit shall be subject to taxation the same as that of individuals."

The statutes of Iowa, upon taxations that have a bearing upon the instant case are as follows:

> "All property subject to taxation shall be valued at its actual value, which shall be entered opposite each item, and shall be assessed at twenty-five per cent of such actual value. Such assessed value shall be taken and considered as the taxable value of such property, upon which the levy shall be made. Actual value of property as used in this chapter shall mean its value in the market in the ordinary course of trade. This section shall not apply to special charter cities." (Supplement Code of Iowa 1913, Sec. 1305.)
>
> "Moneys, credits and corporation shares or stocks, except as otherwise provided, cash, circulating notes of national banking associations, and United States legal tender notes, and other notes, and certificates of the United States payable on demand, and circulating or intended to circulate as currency, notes, including those secured by mortgage, accounts, contracts for cash or labor, bills of exchange, judgments, choses in action, liens of any kind, securities, debentures, bonds other than those of the United States, annuities, and corporation shares or stocks not otherwise taxed in kind, shall be assessed, and, excepting shares of stock of national, state and savings banks and loan and trust companies, and moneyed capital as hereinafter defined, shall be taxed upon the uniform basis throughout the state of five mills on the dollar of actual valuation, same to be assessed and collected where the owner resides. The millage tax here provided

for shall be in lieu of all other taxes upon moneys and credits and shall be levied by the board of supervisors, placed upon the tax list and collected by the county treasurer, and the amount collected in the various taxing districts of the state shall be divided between the various funds upon the same pro rata basis as other taxes collected in such taxing district are apportioned. All moneyed capital within the meaning of section fifty-two hundred nineteen of the revised statutes of the United States shall be listed and assessed against the owner thereof at his place of business, and if a corporation at its principal place of business, at the same rate as state, savings, national bank and loan and trust company stock is taxed, in the same taxing district, and at the actual value of the moneyed capital so invested. The person or corporation using moneyed capital in competition with bank capital shall furnish the assessor upon demand a full and complete itemized sworn statement showing the amount of moneyed capital so used." (Supplement Code of Iowa 1913, Sec. 1310.)

"Private banks or bankers, or any persons other than corporations hereinafter specified, a part of whose business is the receiving of deposits subject to check, on certificates, receipts, or otherwise, or the selling of exchange, shall prepare and furnish to the assessor a sworn statement, showing the assets, aside from real estate, and liabilities of such bank or banker on January first of the current year, as follows:

1. The amount of moneys, specifying separately the amount of moneys on hand or in transit, the funds in the hands of other banks, bankers, brokers or other persons or corporations, and the amount of checks or other cash items not included in either of the preceding items;

2. The actual value of credits, consisting of bills receivable owned by them, and other credits due or to become due;

3. The amount of all deposits made with them by others, and also the amount of bills payable;

4. The actual value of bonds and stocks of every kind and shares of capital stock or joint stock of other corporations or companies held as an investment, or in any way representing assets, and the specific kinds and description thereof exempt from taxation;

5. All other property pertaining to said business, including real estate, which shall be specially listed and valued by the usual description thereof; the aggregate actual value of moneys and credits, after deducting therefrom the amount of deposits, and the aggregate actual value of bonds and stocks, after deducting the portion thereof otherwise taxed in this state, and also the other property pertaining to the business, shall be assessed as provided by section thirteen hundred and five of this chapter, not including real estate, which shall be listed and assessed as other real estate." (Supplement Code of Iowa 1913, Sec. 1321.)

"Shares of stock of national banks and state and savings banks, and loan and trust companies, located in this state, shall be assessed to the individual stockholders at the place where the bank or loan and trust company is located. At the time the assessment is made the officers of national banks and state and savings banks and loan and trust companies shall furnish the assessor with lists of all the stockholders and the number of shares owned by each, and the assessor shall list to each stockholder under the head of corporation stock the total value of such shares. To aid the assessor in fixing the value of such shares, the said corporation shall furnish him a verified statement of all the matter provided in section

thirteen hundred twenty-one of the supplement to the code, 1907, which shall also show separately the amount of the capital stock and the surplus and undivided earnings, and the assessor from such statement shall fix the value of such stock based upon the capital, surplus, and undivided earnings. In arriving at the total value of the shares of stock of such corporations, the amount of their capital actually invested in real estate owned by them and in the shares of stock of corporations owning only the real estate (inclusive of leasehold interests, if any,) on or in which the bank or trust company is located, shall be deducted from the real value of such shares, and such real estate shall be assessed as other real estate, and the property of such corporation shall not be otherwise assessed. A refusal to furnish the assessor with the list of stockholders and the information required under this section shall be deemed a misdemeanor and any bank or officer thereof so refusing shall be punished by a fine not exceeding five hundred dollars." (Supplement Code of Iowa, 1913, Sec. 1322.)

"For the purpose of placing the taxation of bank and loan and trust company stock and moneyed capital as nearly as possible upon a taxable value relatively equal to the taxable value at which other property is now actually assessed throughout the state as compared with the actual value thereof, it is hereby provided that state, savings and national bank stock and loan and trust company stock and moneyed capital shall be assessed and taxed upon the taxable value of twenty per cent. of the actual value thereof, determined as herein provided, which twenty per cent. of the actual value shall be taken and considered as the taxable value and shall be taxed as other property in such taxing district." (Supplement Code of Iowa, 1913, Sec. 1322—1a.)

"The corporations described in the preceding sections shall be liable for the payment of the taxes assessed to the stockholders of such corporations, and such tax shall be payable by the corporation in the same manner and under the same penalties as in case of taxes due from an individual taxpayer, and may be collected in the same manner as other taxes, or by action in the name of the county. Such corporations may recover from each stockholder his proportion of the taxes so paid, and shall have a lien on his stock and unpaid dividends therefor. If the unpaid dividends are not sufficient to pay such tax, the corporation may enforce such lien on the stock by public sale of the same, to be made by the sheriff at the principal office of such corporation in this state, after giving the stockholders thirty days' notice of the amount of such tax and the time and place of sale, such notices to be by registered letter addressed to the stockholder at his post-office address, as the same appears upon the books of the company, or is known by its secretary." (Supplement Code of Iowa, 1897, Sec. 1325.)

The laws of Iowa thus provide, that the shares of stock of national banks shall be assessed upon the same basis and in the same manner as the shares of stock in state and savings banks and loan and trust companies and upon the same basis as moneyed capital and the property of private bankers.

Under the laws of Iowa the City Council of the City of Des Moines, Iowa, constitutes the local board of review for said city. Section 1370, Supplement Code of Iowa, 1913, being as follows:

"The township trustees shall constitute the local board of review for the township or the portion thereof not included within any city or town, and the city or town council shall constitute such board for such city or town. The board shall meet on the first Monday of April,

at the office of the township, city or town clerk or recorder, and sit from day to day until its duties are completed, which shall be not later than the first day of May, and shall adjust assessments for the township, city or town by raising or lowering the assessment of any person, partnership, corporation or association as to any or all of the items of his assessment, in such manner as to secure the listing of property at its actual value and the assessment of property at its taxable value, and shall also add to the assessment rolls any taxable property not included therein, assessing the same in the name of the owner thereof, as the assessor should have done. Provided, however, that in townships having a population of twenty thousand or more, and situated entirely within the limits of a city under special charter, and in cities having a population of twenty thousand or more, including cities under special charter, the board of review may begin the performance of the duties herein defined on and after the first day of March each year."

An appeal from the Local Board of Review is provided by Section 1373, Supplement Code of Iowa, 1913, as follows:

"Any person aggrieved by the action of the assessor in assessing his property may make oral or written complaint thereof to the board of review, which shall consist simply of a statement of the errors complained of, with such facts as may lead to their correction, and any person whose assessment has been raised or whose property has been added to the assessment rolls, as provided in the preceding section, shall make such complaint before the meeting of the board for final action with reference thereto, as provided in said section, and appeals may be taken from the action of the board with reference to such complaints to the district court of the county in which such board holds

its sessions, within twenty days after its adjournment. Appeals shall be taken by a written notice to that effect to the chairman or presiding officer of the reviewing board, and served as an original notice. The court shall hear the appeal in equity and determine anew all questions arising before the board which relate to the liability of the property to assessment or the amount thereof, and its decision shall be certified by the clerk of the court to the county auditor, who shall correct the assessment books in his office accordingly. Any officer of a county, city, town, township or school district interested or a taxpayer thereof may in like manner make complaint before said board of review in respect to the assessment of any property in the township, city or town and an appeal from the action of the board of review in fixing the amount of assessment on any property concerning which such complaint is made, may be taken by any of such aforementioned officers. Such appeal is in addition to the appeal allowed to the person whose property is assessed and shall be taken in the name of the county, city, town, township or school district interested and tried in the same manner, except that the notice of appeal shall also be served upon the owner of the property concerning which the complaint is made and affected thereby or person required to return said property for assessment. Upon trial of any appeal from the action of the board of review fixing the amount of assessment upon any property concerning which complaint is made, the court may increase, decrease or affirm the amount of the assessment appealed from."

In the year 1919, Plaintiff in Error furnished the assessor of the City of Des Moines a statement of the things required under Sec. 1321, and pursuant to the authority vested in it, the Local Board of Review levied an assessment against the shares of

stock of the Des Moines National Bank in the hands of the various individual stockholders. In fixing the value of this stock, the Local Board of Review and the assessor did not deduct certain Liberty Bonds and stock in the Federal Reserve Bank from the capital, surplus, and undivided earnings of the bank. The Des Moines National Bank filed the following complaint before the Local Board of Review objecting to this assessment:

To the Honorable Mayor and Council of the City of Des Moines, Iowa:

Complainant, Des Moines National Bank, a corporation, organized under the laws of the Congress of the United States, having its principal place of business in Des Moines, Polk County, Iowa, respectfully shows to your Honorable Body, sitting as a Board of Review pursuant to the terms of Section 1370 of the Supplement to the Code of Iowa, as follows:

1. That on to wit, January 1, 1919, said Des Moines National Bank owned and held as an investment securities of the United States Government, issued pursuant to the Acts of Congress of April 24, 1917, and September 24, 1917, as amended, of the following kinds and classes, to wit:

Liberty Loan Bonds of the face value of.....	$ 487,800.00
Certificates of indebtedness of the United States Treasury.....	924,000.00
War Savings Stamps of the value of	3,686.00

Said bank also on January 1, 1919, owned and held as an investment stock in the Federal Reserve Bank, created and organized under and by virtue of the Act of

Congress of December 23, 1913,
of the face value of..... 27,000.00

Making the total of such securities
so held as an investment.....$1,442,486.00

2. That on said January 1, 1919, this complainant made a statement to said assessor, pursuant to the terms of Section 1322 of the Supplement to the Code of Iowa, and by said statement the capital stock of said corporation was shown to be $750,000.00, the amount of surplus of said corporation was shown to be $150,000.00 and the amount of undivided earnings of said corporation was shown to be $5,849.02. But said corporation shows to your Honorable Body that under and by virtue of a certain contract existing between said complainant and the stockholders of the German Savings Bank, said complainant has agreed to pay to the said stockholders of the German Savings Bank, or to other persons in accordance with the provisions of said contract, the sum of $50,000.00, and interest thereon at 6 per cent per annum from January 1, 1915, and that said sum of $50,000.00 and interest as aforesaid aggregating $12,000.00, constitutes under the terms of said contract, an obligation of said corporation, and should for the purpose of this proceeding be deducted from the total amount of capital, surplus and undivided earnings, leaving as the net capital, surplus and undivided earnings of said corporation the sum of $843,849.02.

3. That on said January 1, 1919, said complainant owned and held as an investment real estate of the total assessed value of $156,050.00.

4. That said assessor has assessed the total value of the shares of stock of said corporation at $748,799.00, or at an amount substantially and practically identical with the total capital, surplus and undivided earnings of said corporation, without deducting said sum

of $50,000.00, and interest as aforesaid, on account of said obligation arising from the said contract with the German Savings Bank, and including the value of said securities of the United States Government, less the value of the real estate owned and held by said corporation as an investment.

5. Complainant charges that said assessment is erroneous in that thereby there is subjected to taxation securities of the United States Government, issued pursuant to the provisions of the Act of Congress of April 24, 1917, and of the Act of Congress of September 24, 1917, both as amended, and of the Act of Congress of December 23, 1913.

6. Complainant charges that said assessment is erroneous in that it subjects to assessment and taxation by said local taxing authority securities of the United States Government, or securities issued under the authority of the United States Government, to the extent of $1,442,486.00, contrary to the provisions of the Constitution of the United States, and the Statutes in such cases made and provided.

7. Complainant charges that said assessment is erroneous in that the same is not made in accordance with the provisions of Sections 1321 and 1322 of the Supplement to the Code of Iowa, for the reason that by Section 1322 the Assessor is required to fix the value of the shares of stock of corporations based upon the capital, surplus and undivided earnings disclosed by the statement therein required to be furnished by the corporation, and which is required to contain the same information set forth in Section 1321 of the Supplement to the Code of Iowa, whereas by the fourth subdivision of said section 1321 the specific kinds and descriptions of securities exempt from taxation are required to be stated.

8. That said assessment is erroneous, in that in truth and in fact by the method pursued

the assessment is of the tangible assets of complainant, and include as such, securities of the United States Government, or securities issued under the authority of the United States Government to the extent hereinbefore stated.

9. For the reason that unless the assessment made, pursuant to the provisions of Sections 1321 and 1322 of the Supplement to the Code of Iowa, is in truth and in fact an assessment against the property or tangible assets of complainant, then said sections of said Supplement to the Code of Iowa are unconstitutional and void, for that said sections provide that the property of the corporation shall not be otherwise assessed, while Section 2 of Article 8 of the Constitution of Iowa provides "that the property of all corporations for pecuniary profit shall be subject to taxation the same as that of individuals."

10. That said assessment is erroneous in that it is contrary to the provisions of Section 5219 of the Revised Statutes of the United States because by said assessment the shares of stock of complainant are subjected to a greater assessment and tax than is imposed upon money capital in the hands of individual citizens in said state used and utilized in the same business.

11. That said assessment is erroneous in that it is contrary to the provisions of Section 5219 of the Revised Statutes of the United States, for that the shares of stock in National Banking Associations are immune from taxation by state or local taxing authorities, except upon the express consent of the Congress of the United States, and such consent, if any, is evidenced by the provisions of said Section 5219 of the Revised Statutes, whereas said section, for the purpose of preserving the state power of taxation, is construed by the Supreme Court of the United States to consider the subject from the point of view of ultimate beneficial in-

terest; that is, said section treats the stock interest, the stockholder and the bank as one, and subject to one taxation by the methods which it provides.

12. That said assessment is erroneous in that said assessor has failed to deduct from the capital, surplus and undivided earnings of said corporation the amount of said obligation of said corporation of $50,000.00 on account of said German Savings Bank.

Wherefore said complainant prays that your Honorable Body adjust said assessment by lowering the total value of the shares of stock, or property of the complainant to the extent of the par value of the said securities of the United States Government, and by deducting from the total amount of capital, surplus and undivided earnings the said amount of the obligation of said complainant on account of the said German Savings Bank Contract.

To the Honorable Mayor and Council of the city of Des Moines, Iowa:

Complainant, Des Moines National Bank, a corporation, having its principal place of business in Des Moines, Polk County, Iowa, by way of amendment to its protest heretofore filed before your Honorable Body, sitting as a Board of Review pursuant to the terms of Section 1370 of the Supplement to the Code of Iowa, states:

1. That on to wit, the 19th day of April, 1919, by reason of the publication thereof in accordance with the provisions therein contained, a certain act of the General Assembly of the State of Iowa known as Senate File No. 479, and entitled "A bill for an act to amend Section One Thousand Three Hundred Four (1304) Supplemental Supplement to the Code, 1915, relating to property exempt from taxation" became effective, the said act being in words and figures as follows, to wit:

"Section 1. That Section one thousand three hundred four (1304), Supplemental Sup-

plement to the Code, 1915, be and the same is hereby amended by adding after the semicolon in line sixteen thereof, the following:

'Provided, however, that in determining the assessed value of bank stock, the amount of obligations issued by the United States government since the declaration of war against Germany, actually owned by a bank or trust company shall be deducted, and any bank or trust company which since January first, nineteen nineteen, has been assessed on its shares of stock without so deducting such United States government securities shall be entitled to have its assessment on its shares reduced by the Board of Supervisors of the County in which such bank is located, so as to deduct from its total valuation such government securities. Provided, however, that no deduction shall be made unless the bank or trust company claiming the same shall have been the owner in good faith and not for the sole purpose of securing such deduction, of said securities for a period of more than sixty (60) days prior to December thirty-first of the year preceding that for which the assessment is made.' "

"Section 2. This act being of immediate importance shall become effective upon the publication thereof in the Des Moines Register, and the Des Moines Capital, newspapers published in Des Moines, Iowa."

2. Said complainant further shows to your Honorable Body that on to wit, November first, 1918, said complainant actually owned securities issued by the United States Government since the declaration of war against Germany, as follows:

Bonds issued pursuant to the Acts of Congress of April 24, 1917, and September 24, 1917, as amended, in the total sum of..	$ 215,550.00
War Savings Stamps of the value	

of 1,856.80
Certificates of indebtedness of the United States of the value of.. 1,213,000.00
That the minimum amount of such securities so actually owned in good faith and not for the sole purpose of securing a deduction thereof from the assessment of the shares of stock of said complainant during the said period of sixty days prior to December 31, 1918, was... 951,274.96
Said bank also on January 1st, 1919, owned and held as an investment stock in the Federal Reserve Bank, created and organized under and by virtue of the Act of Congress of December 23rd, 1913, of the face value of..... 27,000.00

3. In addition to the reasons set forth in complainant's original protest, complainant charges that the assessment therein referred to is erroneous, because in contravention of the provisions of the Act of the General Assembly of the State of Iowa just hereinbefore referred to.

Wherefore said complainant in addition to the matters and things included in the original protest filed herein, and without waiving any of the allegations thereof submits that your Honorable Body should at least adjust said assessment by lowering the total value of the shares of stock or property of the complainant to the extent of the value of said securities of the United States Government or securities issued under the authority of the United States Government, or that said assessment should be reduced by the said sum of $978,274.00. (Pages 14, 15, 16, 17 and 18, Transcript of Record.)

The Local Board of Review on April 30, 1919, by resolution, corrected the said assessment by reducing the same in an amount equal to, and

representing, the obligation outstanding under the contract with the German Savings Bank, but overruled the complaint of the Des Moines National Bank in all other respects. The Plaintiff in Error perfected an appeal in accordance with the terms of the statute to the District Court of Polk County, Iowa, and filed the following petition:

"Plaintiff in error on January 1, 1919, owned and held as an investment securities of the United States Government issued pursuant to the acts of Congress of April 24, 1917, and Sept. 24, 1917, as amended, of the following kinds and classes to-wit:

Liberty Bonds of the face value of	$ 487,800.00
Certificates of indebtedness of the United States Treasury.....	924,000.00
War Savings Stamps of the value of	3,686.00
Said Bank also on January 1, 1919, owned and held as an investment stock in the Federal Reserve Bank, created and organized under and by virtue of the Act of Congress of December 23, 1913, of the face value of	27,000.00
Making the total of such securities so held as an investment.....	$1,442,486.00

On January 1, 1919, as required by Section 1322 of the Supplement to the Code of Iowa, plaintiff in error made a statement to the City Assessor showing its capital stock, surplus and undivided earnings to aggregate $905,849.02, but that from such aggregate the amount of $62,000.00 should be deducted as representing an obligation of plaintiff in error under a contract specifically referred to. Included in the assets of the bank from which such capital, surplus, and undivided earnings were computed

were said securities of the United States Government aggregating $1,442,486.00; that plaintiff in error owned and held as an investment real estate of the total assessed value of $156,050.00, and that the City Assessor assessed the total value of the shares of stock of plaintiff in error at $748,799.00, or at an amount substantially and practically identical with the total capital, surplus and undivided earnings of said corporation, including the value of said securities issued by the United States Government, and including the amount of the obligation of said bank on account of said contract.

The Local Board of Review on April 30, 1919, by resolution corrected said assessment by reducing the same to the sum of $687,799.02, this correction requiring the reduction of the assessment by the sum of $62,000.00 represented by the amount of the obligation outstanding under said contract with the German Savings Bank, but overruled the complaint of plaintiff in error in all other respects.

On January 1, 1919, there were in the City of Des Moines persons other than corporations, a part of whose business was the receiving of deposits subject to check, on certificates, receipts, or otherwise, or the selling of exchange, or in other words, there were within the limits of said city persons engaged in business as private bankers within the meaning of Section 1321 of the Supplement to the Code of Iowa; that the Drake Park Bank, the Cottage Grove Bank, Oak Park Bank and Capitol Hill Bank, were each conducted by persons other than corporations and as private bankers within the meaning of said act, and that such private bankers were direct competitors of plaintiff in error.

After averring the provisions of Section 1321 and 1322 of the Supplement to the Iowa Code, as also the provisions of Section 5219 of the Revised Statutes of the United States and the applicable provisions of the Acts of Con-

gress of April 24, 1917 (40 St. at Large, c. 4, p. 35), and September 24, 1917 (40 St. at Large, c. 56, p. 288), and December 23, 1913 (38 St. at Large, c. 6, p. 251), said plaintiff in error averred that said assessment was erroneous upon the following grounds:

1. Because said assessment subjected to taxation said securities of the United States Government.

2. Because said assessment subjected to taxation said securities of the United States Government contrary to the provisions of the Constitution of the United States and the statutes in such cases made and provided.

3. Because said assessment subjected to taxation shares of stock in a national banking corporation, organized as aforesaid, at a greater rate than moneyed capital in the hands of individual citizens of a state.

4. Because said assessment was not made in accordance with the provisions of Sections 1321 and 1322 of the Supplement to the Code of Iowa, for the reason that by said Section 1322 the Assessor is required to fix the value of the shares of stock of corporations based upon the capital, surplus and undivided earnings, disclosed by the statement therein required to be furnished by the corporation and required to contain the same information set forth in Section 1321 of the Supplement to the Code of Iowa, whereas by the fourth subdivision of section 1321 the specific kinds and descriptions of bonds exempt from taxation is required to be stated, and that in and by the proceedings leading to said assessment such bonds have not been exempted from taxation, but have been considered in fixing the amount of said assessment.

5. Because in truth and in fact by the method pursued the assessment is of the tangible assets of the plaintiff in error and includes

said securities issued by the United States Government.

6. Because said assessment is contrary to the provisions of Section 5219 of the revised statutes of the United States, for that the shares of stock in national banking associations are immune from taxation by state or local taxing authority, except upon the express consent of the Congress of the United States, and such consent if any, is evidenced by the provisions of said section 5219 of the revised statutes, whereas said section, for the purpose of preserving the state power of taxation, is construed by the Supreme Court of the United States to consider the subject from the point of view of ultimate beneficial interest; that is, said section treats the stock interest, the stockholder, and the bank as one and subject to one taxation by the method which it provides.

That unless the assessment made pursuant to the provisions of sections 1321 and 1322 of the Supplement to the Code of Iowa is in truth and in fact an assessment against the property or tangible assets of plaintiff in error, then said sections of said Supplement to the Code of Iowa are unconstitutional and void, for that said sections provide that the property of the corporation shall not be otherwise assessed, while section 2 of article 8 of the Constitution of Iowa provides 'that the property of all corporations for pecuniary profit shall be subject to taxation the same as that of individuals.'

Certain other allegations were included raising points arising solely under the provisions of statutes of the State of Iowa." (Pages 4, 5, 6, and 7 of Plaintiff in Error's Brief and Argument.)

The defendants in error filed the following demurrer:

Come now the defendants herein and demur

to plaintiff's petition, and as grounds therefor to the court state:

Paragraph 1. Plaintiff is not entitled to the relief demanded nor to any relief.

Paragraph 2. Plaintiff's petition on its face shows that plaintiff is not entitled to the relief demanded, not to any relief.

Paragraph 3. Chapter 257, Acts of the 38th General Assembly, under which plaintiff seeks to exempt its stock from assessment is in violation of Section 30 of Article 3 of the Constitution of Iowa, and is therefore unconstitutional and void.

Paragraph 4. Chapter 257, Acts of the 38th General Assembly, under which plaintiff claims exemption is not only a special law but in operation and effect will relieve one class of people from the burden of taxation, all in violation of the Constitution of Iowa and especially Section 30 of Article 3.

The District Court of Polk County, Iowa, overruled said demurrer and the Defendants in Error having elected to stand thereon entered its judgment and decree:

"That the assessment returned by the Assessor and amended and as approved by said Board of Review in the year 1919 of $687,799.02 against the property or the capital stock, exclusive of real estate, of the Des Moines National Bank, shall be cancelled and set aside and held for naught, and that the Clerk of this Court shall send to the County Auditor and County Treasurer of Polk County, State of Iowa, a certified copy of this decree, and that the plaintiff have and recover of the defendants above named its costs herein taxed and found to be the sum of $.....

An appeal to the Supreme Court of Iowa, being the Court of last resort of that state, was perfected

by the defendants in error and on February 12, 1921, the Supreme Court of Iowa, reversed the judgment and decree of the District Court of Polk County and held that the demurrer should have been sustained. Petition for rehearing was filed and on September 28, 1921, the Supreme Court of Iowa in the supplemental opinion adhered to its former opinion overruling the petition for rehearing. To review this judgment of the Supreme Court of Iowa this writ of error was issued and the case is now before this court for determination.

BRIEF AND ARGUMENT.

DIVISION I.—A.

The Constitution of Iowa does not prohibit the enactment of statutes for the taxation of the property of corporations or individuals by classes. The Legislature may classify property for taxation and may apply any assessment base that it may elect, so long as such assessment base is equal as to all property within the class.

Michigan Central R. R. Co. v. *Powers,* 201 U. S. 245, 293, 302;

Hunter v. *Coal Co.,* 175 Iowa, 254, 287, 289, 154 N. W. 1037, amended, 157, N. W. 145;

Waterloo Rapid Transit Co. v. *Board of Supervisors,* 131 Iowa, 237; 108 N. W. 307;

United Express Co. v. *Ellyson,* 28 Iowa, 370;

Warren v. *Henry,* 31 Iowa, 31;

Dubuque v. *Railroad Co.*, 47 Iowa, 196;

Hawkeye Insurance Co. v. *French*, 109 Iowa, 585; 80 N. W. 660;

The Scottish U. & N. Ins. Co. v. *Herriott*, 109 Iowa, 606; 80 N. W. 665.

B.

Under the laws of the State of Iowa as enacted by its Legislature, the shares of stock of national banks are assessed upon the same basis and in the same manner as the shares of stock in state and savings banks and loan and trust companies. It is also assessed upon the same basis as moneyed capital, as defined by section 5219 of the Revised Statutes of the United States. It is also assessed upon the same basis as the property of private bankers.

Sec. 1310, Supplement to the Code (Iowa), 1913.

Sec. 1321, Supplement to the Code (Iowa), 1913.

Sec. 1322, 1322-1a, 1322-2a, 1322-3a, and 1322-4a, Supplement to the Code (Iowa), 1913.

C.

The decision of the highest court of the State as to the validity under the State Constitution or statutes of the State are conclusive upon the federal courts.

In Re: *Gilligan*, 206 U. S. 563;

Covington v. *First Nat. Bk.*, 198 U. S. 100;

United States v. *Anderson*, 169 Fed. 201;

See cases cited 40 L. R. A. (N. S.) 447 (Note).

D.

The particular statute here complained of in part, namely Sections 1322, 1322-1a, 1322-2a, 1322-3a and 1322-4a have been repeatedly upheld by the Supreme Court of the State of Iowa.

First National Bank v. *Anderson*, 192 Iowa, 6;

Securities Savings Bank v. *Board*, 189 Iowa, 463;

Des Moines National Bank v. *Fairweather*, 191 Iowa, 1240;

First National Bank v. *Council Bluffs*, 182 Iowa, 107;

Head v. *Board of Review*, 170 Iowa, 300.

E.

Under Sections 1322, 1322-1a, 1322-2a, 1322-3a and 1322-4a of the Supplement to the Code (Iowa) 1913, the Supreme Court of the State of Iowa has held specifically that the tax therein provided for is upon the shares of stock in the hands of the individual stockholder and not upon the property of the banks.

Des Moines Nat. Bk. v. *Fairweather*, 181 N. W. 459 (Iowa);

Des Moines Nat. Bk. v. *Fairweather,* 184 N. W. 313 (Iowa);

Head v. *Bd. of Rev.,* 170 Iowa, 300, 152 N. W. 600.

First Nat. Bk. v. *Council Bluffs,* 182 Iowa, 107.

F.

The Circuit Court of Appeals of the United States for the Eighth Circuit has held likewise.

Hannan, County Auditor v. *First Nat. Bk. of Council Bluffs,* (C. C. A.), 269 Fed. 527.

G.

A share of stock in a national bank is a distinct article of property. It is a property right, separate and distinct, from the property rights held by the corporation, and as such, separate and distinct property right, it may be taxed without regard to the property held by the corporation.

Van Allen v. *Assessors,* 3 Wall. 573, 18 L. Ed. 229;

People v. *The Commissioners,* 4 Wall. 244, 18 L. Ed. 344;

Nat. Bk. v. *Commonwealth,* 9 Wall. 353, 19 L. Ed. 701;

Bk. of Com. v. *Tenn.,* 161 U. S. 134, 40 L. Ed. 645;

Cleveland Trust Co. v. *Lander,* 184 U. S. 111;

Owensboro Nat. Bk. v. *Owensboro,* 173 U. S. 664;

Citizens Nat. Bk. v. *Ky.,* 217 U. S. 443;

Home Savings Bk. v. *Des Moines,* 205 U. S. 503, 51 L. Ed. 901;

Nat. Bk. of Com. v. *Internal Rev. Coll.,* 223 Fed. (C. C. A.) 472;

Des Moines Nat. Bk. v. *Fairweather, Supra.*

First Nat. Bk. v. *Independence,* 123 Iowa, 484;

Nat. State Bk. v. *Burlington,* 119 Iowa, 696;

First Nat. Bk. v. *Moon,* 170 Pac. 33 (Kans.).

H.

In determining the value of shares of stock of a national bank for the purpose of taxation, no deduction is to be made on account of the capital of the corporation invested in Liberty Bonds or other securities exempt from taxation.

Van Allen v. *Assessor,* 3 Wall. 573;

First Nat. Bk. v. *Ky.,* 9 Wall. 353;

Board of Equalization v. *Peoples Nat. Bk. of Kingfisher County,* 67 L. Ed. 180, affirming *Board of Equalization* v. *Peoples Nat. Bk. of Kingfisher County,* 193 Pac. 622;

In Re: First Nat. Bk. of Aurora, 171 N. W. 912 (Neb.);

Des Moines Nat. Bk. v. *Fairweather,* 191 Iowa, 1240, 1249, 181 N. W. 459, 184 N. W. 313.

I.

The Supreme Court of this state in its interpretation of Section 1321, Supplement to the Code 1913, holds that this section does not impose a lesser rate of taxation on the property of private bankers than the rate applied to shares of stock in national, state and savings banks.

Des Moines Nat. Bk. v. *Fairweather,* 191 Iowa, 1240, 1249, 181 N. W. 459, 184 N. W. 313.

Head v. *The Board of Review,* 170 Iowa, 300; 152 N. W. 600.

J.

The federal courts have held likewise.

Hannan, County Auditor v. *First Nat. Bk. of Council Bluffs,* (C. C. A.) 269 Fed. 527;

People v. *Commissioners,* 4 Wall. 244, 18 L. Ed. 344;

Exchange Nat. Bank v. *Miller,* 19 Fed. 372 (C. C. A.).

K.

That mathematical equality is not arrived at in the process is immaterial. It cannot be reached in

any system of taxation and it is useless and idle to attempt it. Equality so far as the different facts will permit, and as near as they will permit, is all that can be aimed at or reached.

First Nat. Bk. v. *Chapman,* 193 U. S. 205; 43 L. Ed. 669;

Head v. *Board of Review,* 170 Iowa, 300; 152 N. W. 600;

Stanley v. *Board of Supervisors,* 121 U. S. 535.

L.

Where the general statutes of the state (such as Sec. 1305 Code of Iowa, 1897), provide that all property, both real and personal, shall be valued for taxation at its actual value, a law governing the valuation of special classes of property cannot be held unconstitutional because in the administration of the general statute some officers do not properly perform their duties and return valuations thereunder that are less than the actual value.

Cummings v. *Mer. Nat. Bk.,* 101 U. S. 153; 25 L. Ed. 903;

Mich. R. R. v. *Powers,* 201 U. S. 301; 50 L. Ed. 765;

Missouri v. *Shannon,* 100 Tex. 396; 10 L. R. A. (N. S.) 681;

Central v. *Assessors,* 75 N. J. L. 134, 67 Atl. 677 (N. J.);

Richards v. *Rock Rapids,* 31 Fed. 505.

M.

The assessment of the shares of stock of the Des Moines National Bank having been in accordance with the statutes of the State of Iowa as upheld by the highest court of the state, the assessment base as therein provided is final without regard as to whether or not such assessment base is fixed by statute or is to be determined by the market value or the actual value, or the book value, or par value of such shares of stock.

Gray's "Limitations of Taxing Power," Page 647;

Cooley on Taxation, 3 Ed. Vol. 1, p. 291, 365;

Pacific Express Co. v. *Siebold,* 140 U. S. 349;

Railroad Co. v. *Pennsylvania,* 134 U. S. 232;

Mich. Central R. R. Co. v. *Powers,* 201 U. S. 245, 293, 302.

N.

There is no discrimination in the assessment of the property of national banks or of shares of stock therein under the laws of Iowa.

First Nat. Bk. v. *Andersen,* 192 N. W. (Iowa), 6;

Securities Savings Bk. v. *The Board,* 189 Iowa, 463;

Des Moines Nat. Bk. v. *Fairweather,* 181 N. W. 459 (Iowa); 191 Iowa, 1249;

Des Moines Nat. Bk. v. *Fairweather,* 184 N. W. 313 (Iowa); 191 Iowa, 1240;

Head v. *Bd. of Rev.,* 170 Iowa, 300;

First Nat. Bk. v. *Council Bluffs,* 182, Iowa, 107.

DIVISION II.—A.

In determining the value of the shares of stock of a national bank for taxation purposes under the laws of Iowa, it is not necessary to provide for a deduction on account of the capital stock of the corporation invested in stock of the Federal Reserve Bank.

Van Allen v. *Assessor,* 3 Wall. 573;

First Nat. Bk. v. *Ky.,* 9 Wall. 353;

Board of Equalization v. *Kingfisher County,* 67 L. Ed. (U. S.) 180, 193 Pac. 623;

In re: First Nat. Bk. of Aurora, 171 N. W. 912 (Neb.);

Securities Savings Bank v. *Board of Review,* 189, Iowa, 463;

Des Moines National Bank v. *Fairweather,* 191, Iowa, 1240, 1249;

Hannan v. *First National Bank of Council Bluffs,* 269 Fed., 527 (C. C. A.).

B.

The record in this case fails to show that the property of the plaintiff in error has either been as-

sessed or that it has paid any taxes on the Federal Reserve Bank stock owned by it, hence the decision in *Bank of California* v. *Richardson,* 248 (U. S.) 476, can not apply.

Des Moines National Bank v. *Fairweather,* 191, Iowa, 1240, 1255;

Hannan v. *First National Bank of Council Bluffs,* 269, Fed. 527 (C. C. A.);

Securities Savings Bank v. *Board of Review,* 189, Iowa, 463.

DIVISION III.—A.

The Supreme Court of Iowa has interpreted the laws of the state relating to procedure before the local boards of review, and on appeal to the courts.

First Nat. Bank v. *City of Council Bluffs,* 182 Iowa 107.

B.

The interpretation of such statutes by the Supreme Court of Iowa is in substance that all objections which a taxpayer may have to his assessment must be clearly and specifically stated; that such objections must be so stated that the board of review will clearly and definitely understand the precise grievance concerned and the relief asked, and on appeal the property owner must stand or fall thereon.

First Nat. Bank v. *City of Council Bluffs,* 182 Iowa 107.

C.

The question now first presented, that the assessment of the property of Plaintiff in Error was in violation of the provisions of Section 5219 of the Revised Statutes of the United States in that it assessed the capital stock of the Plaintiff in Error upon a different basis than that applied to moneyed capital in the hands of individual citizens, was not raised before the local board of review.

First Nat. Bank v. *City of Council Bluffs*, 182 Iowa 107;

Transcript of the Record, Page 16.

D.

Neither was it presented to the District Court of Polk County, Iowa, on appeal.

Transcript of Record, Pages 1-16.

E.

Neither was it presented to the Supreme Court of the State of Iowa.

Transcript of Record;

Des Moines Nat. Bk. v. *Fairweather*, 191 Iowa 1040, 1049.

F.

The Supreme Court of Iowa is limited in its review to questions decided by the lower court.

Nat. Bank v. *City Council*, 136 Iowa 203;

Herbig v. *Auto Co.*, 186 Iowa 923.

G.

A vital question first raised in the petition for rehearing in the highest court of the state is raised too late to be considered by the Supreme Court of the United States.

Mutual Life Ins. Co. v. *McGrue*, 188 U. S. 291.

H.

In cases identical with that at bar, the Supreme Court of the State has held that the question of discrimination has not been properly plead. Neither the petition filed in the district court of Polk County nor the objections raised before the local board of review allege that the moneyed capital referred to is invested in competition with the shares of stock of the Plaintiff in Error bank.

Merchants Nat. Bk. v. *Richmond*, 256 U. S. 635;

Boyer v. *Boyer*, 113 U. S. 689;

First Nat. Bk. of Guthrie Center v. *Andersen*, 192 N. W. (Ia.) 6;

First Nat. Bank v. *City Council Bluffs*, 182 Iowa 107.

I.

By the use of the term "Moneyed Capital" a condition of competition with the business of national banks is not shown; it must be satisfactorily made to appear by the proof that the moneyed capital claimed to be given an unjust advantage is of

the character to come in substantial competition with such banks.

Commercial Nat. Bank v. *Chambers,* 182 U. S. 556;

First Nat. Bank v. *Chehalis,* 166 U. S. 440;

Mercantile Nat. Bank v. *New York,* 121 U. S. 138.

J.

What the National Congress intended to do when it forbid discrimination in favor of moneyed capital was to prevent the states from discriminating in favor of institutions or individuals carrying on a similar business and operations and investments of a like character, not to prohibit the states from classifying ordinary moneys and credits for taxation purposes.

Jenkins v. *Neff,* 186 U. S. 230;

First Nat. Bank v. *Andersen,* 192 Iowa 6.

ARGUMENT

The argument of the plaintiff in error has been arbitrarily divided into three divisions. In these divisions it is claimed in substance as follows:

1. Illegality of assessment because it subjects to taxation, securities issued by, or under, authority of the United States.
2. Illegality of assessment because it is in part based upon the value of capital stock of the Federal Reserve Bank of Chicago, owned by plaintiff in error.
3. Illegality of assessment because of discrimination against national banks.

In the first division of its argument, plaintiff in error contends that the assessment of the shares of stock of its stockholders is invalid, because it subjects to taxation, securities issued by, or under, authority of the United States.

In connection therewith, an elaborate argument is presented in which it is contended that the assessment of the shares of stock of its stockholders is in fact an assessment against the property of the corporation. It is assumed that this argument is presented to avoid the effect of the recent decision of this court in *Board of Equalization v. People's Nat. Bk. of Kingfisher County,* 67 L. Ed. 180, affirming the same case as found in 193 Pac. (Okla.) 622.

The fallacy of this argument will be apparent from an examination of the statutes of Iowa governing the taxation of the shares of stock of national,

state and savings banks and loan and trust companies, as well as the statutes of the state of Iowa relating to the assessment of moneyed capital and private banks.

At the outset it may be conceded, that, if the laws of the State of Iowa impose a tax upon the property of the bank, then the tax exempt securities owned by it must be deducted; but if, as the Supreme Court of Iowa has repeatedly held, (*Des Moines National Bank v. Fairweather,* supra; *First National Bank v. Council Bluffs,* 182 Iowa 107; *Head v. Board of Review,* 170 Iowa 300; *National State Bank v. Burlington,* 119 Iowa 696) the tax is in fact a tax against the shares of stock, the property of the stockholder, then most certainly the stockholder is not entitled to claim exemption thereunder.

When a National Bank begins doing business it has no money or property except the cash paid in on subscriptions to capital stock. The corporation buys a banking house or other real estate with a part of the money. The banking house or other real estate is not capital stock. It is simply property purchased with money in the bank. The corporation proceeds to do a general banking business, and acquires notes and other instruments representing loans, acquires bonds, stock, mortgages, and other securities, and acquires real estate and various other kinds of property. All this property belongs to the bank. The stockholders have no proprietorship in it or proprietory dominion over it. The property thus acquired, credits of various kinds, and cash and cash items in the vault, constitute the bank's assets or resources, sometimes spoken of in an economic way as its capital. They have all been acquired

through the uses to which the original capital stock and its products have been put, but they are not capital stock. The bank may make some money. The profits thus acquired belong to the corporation, and can be disposed of by the Board of Directors only, not by the stockholders. The stockholders have no property in profits until the directors have declared a dividend. A surplus fund may be created and profits not set aside as surplus or paid out in dividends are undivided profits and are the property of the bank and not capital stock. The right of the stockholders is limited to sharing in such dividends as the Board of Directors may declare out of the profits and to sharing in the distribution of the assets of the bank when it winds up its affairs after depositors and other creditors have been satisfied. The stockholder may dispose of his shares as personal property. He cannot sell or dispose of any part of the money or property which belongs to the corporation. At their inception, national banks were not subject to state taxation. Such a provision, however, was added by Congress in 1864 and now appears as Section 5219 in the Revised Statutes of the United States. In *Owensboro National Bank v. Owensboro,* 173 United States 664, 669, this Court has said:

> "This Section, then, of the Revised Statutes is the measure of the power of a state to tax national banks their property or their franchises. But its unambiguous provisions the power is confined to a taxation of *the shares of stock in the names of the shareholders,* and to an assessment of the real estate of the bank. Any state tax, therefore, which is in excess of and not in conformity to these requirements is void."

The interest of the shareholder in a national bank is the interest which is left subject to taxation by the states under the limits of Section 5219 of the Revised Statutes. (*Van Allen v. Assessors,* 3 Wall. 573.) To conform to the Federal Law the State of Iowa enacted Sections 1321, 1322, 1322-1a, Supplement 1913 Code of Iowa, and Section 1325 Code of Iowa, 1897. Through the enactment of this legislation full equality between national banks and state and savings banks and loan and trust companies was accomplished.

The argument advanced by Plaintiff in Error that the shares of stock in fact represent the capital of the corporation and that a tax upon the shares is in fact the same as a tax upon the corporation is an argument that has often been advanced in this Court and as often this Court has shown its fallacy. (*Van Allen v. Assessors,* 3 Wall. 573; *People v. Commissioners,* 4 Wall. 244; *National Bank v. Commonwealth,* 9 Wall. 353.) And the distinction between the shares of stock as property of the stockholder and the property of the corporation, has always been recognized by this Court.

The purpose of a list of stockholders required in Section 1322 is obvious. The stockholders are the persons taxed and not the bank. The statement of the amount of stock held by the stockholders and the value of such shares to be made by the bank as therein provided, is designed to facilitate the work of the assessment, as is the requirement that the bank shall show in the statement the amount of its capital stock, surplus and undivided earnings. Section 1325 Code of Iowa 1897 makes the corporation the responsible agent for the collection of the

tax due from the shareholder. It may be interesting to note that in this regard the Oklahoma Statutes and the Iowa Statutes are almost identical. See Section 9607, Compiled Statutes of Oklahoma, 1921. We make this observation relative to the Oklahoma Statutes to again point out the marked similarity between the issues involved in the case of the Board *of Equalization v. Peoples Nat. Bk. of Kingfisher County,* supra, and the issues involved in this case. The tax is not a tax upon the capital, surplus, and undivided earnings. No such tax has been assessed. The tax is assessed upon the shares of stock, the property of the stockholder. "The lien on his stock and unpaid dividends" (Sec. 1325, Code of Iowa 1897), given the corporation to reimburse it for payment of the tax is not a lien upon the capital, surplus, and undivided earnings. The corporation already owns these in its own right, but the lien is on the property of the shareholder, i. e., his stock. This method of collecting taxes due from stockholders was discussed and approved by this Court in the case of *National Bank v. Commonwealth,* 9 Wall. 353, the Court therein saying:

> "The mode under consideration is the one which Congress itself has adopted in collecting its tax on dividends and on the income arising from bonds of corporation. It is the only mode which, certainly and without loss, secures the payment of the tax on all the shares, resident or non-resident; and, as we have already stated, it is the mode which experience has justified in the New England states as the most convenient and proper, in regard to the numerous wealthy corporations of those states. It is not to be readily inferred, therefore, that Congress intended to prohibit this mode of collecting a tax which they expressly permitted the states to levy."

The Iowa law provides that the tax shall be upon "the value of such shares," the bank to furnish the assessor with certain information including a statement of the amount of capital stock, surplus, and undivided earnings, together with the bank statement of the value placed by it upon such shares, and from this statement the assessor is to fix the value of such stock, using as a basis the capital, surplus, and undivided earnings, making certain deductions provided for in the statute. (Sec. 1322 Supplement to the Code of Iowa, 1913.) The recent case cited by Plaintiff in Error, *Bank of California v. Richardson*, 248 U. S. 476, does not deny to the states the right to tax the shares of stock of a national bank, basing their value upon all the bank's assets, even though some of these assets are exempt from taxation. On the contrary, such right is expressly affirmed. The decision in that case is grounded upon the thought that Section 5219, Revised Statutes of the United States, prohibits to the states the laying of more than one tax upon the same value, and having once exercised that right to tax but once the same value, the right is then exhausted and a double taxation thereon can not be layed.

Suppose a case where a bank has been in operation for about a year with a capital of $100,000.00 at the beginning of business, the capital had all been invested in a building, fixtures, and real estate in which to do business, the deposits made during the year amount to $200,000.00. These deposits had been invested and re-invested in various kinds of property but at the end of the year they were all reinvested in Liberty Bonds. The earnings of the bank made by the different transactions amount to

$5,000.00. Under the Iowa Law the stock would be assessed upon a basis of $5,000.00 or the undivided earnings. It is very clear that this is a tax upon stock of the bank, the assessed valuation of $5,000.00 is not a tax upon the Liberty Bonds, nor the money invested in them. No part of the $5,000.00, undivided earnings went into the purchase of the Liberty Bonds; only the deposits were used for that purpose. Proceeding still farther, it is equally clear that taxing the shares of stock of this bank upon a valuation of $5,000.00 (capital and undivided earnings, less real estate) is not taxing the capital, surplus, and undivided earnings as such. Not one penny of tax is paid by the shareholders because of the capital of this bank. The capital was all deducted because of its investment in real estate. After a year or two, perhaps the bank has accumulated a surplus and it makes a further investment in real estate sufficient to absorb the surplus and undivided earnings. After such an investment is made there will not be one penny of taxation for the shareholders to pay on their shares, for in that case it will all be deducted, yet both in legal theory and in economics, the bank will still be the holder of capital, surplus, and undivided earnings. We submit that a law which in many cases does not levy a tax at all, notwithstanding that there is in existence both capital, surplus, and undivided earnings, but leaves them out of consideration entirely, cannot be said to be a tax upon the capital, surplus, and undivided earnings in the sense that it is levied upon each item as such. These illustrations show the unsoundness of the claims made by the Plaintiff in Error. Their doctrines lead to absurd conclusions in many cases that must

be of a fairly common occurrence. To a limited extent that situation is present in every case where a bank owns real estate or stock in a building company. The nub of the reasons for these results is that the property right, the thing that is taxed, is not the same as the property right of or the things held by the corporation. Sometimes the capital, surplus, and undivided earnings are invested in one thing, sometimes in another. One year it may be Liberty Bonds, the next, real estate; the next it may be loaned to private individuals or invested in various things. Sometimes the investment is tax exempt, other times, it is not. But the property right, the thing that is taxed under the Iowa Law, is the right of the shareholder to share in what is left of the assets of the bank, if the assets were closed out and this right is by no means identical with the character of the property in which the bank assets are invested. If the bank charges off any of its assets as worthless, it must of necessity replace that loss by drawing on its capital, surplus, or undivided earnings, and that would correspondingly reduce the asessed value of its stock under the present Iowa Law. The Iowa Law really places a value upon the stock which is measured and determined by only such of the tangible assets of the bank as would be distributed to the stockholders, in case the bank's affairs were closed out, less the investment in real estate. Consideration of intangible values could never further reduce this value of the stock, but could only increase it. The value thus fixed, must of necessity be the minimum value in actual money in all cases. The fact that this value bears a similarity in amount to the capital, surplus, and undivided

earnings, is but an incident of the situation. It does not change the character of the tax or assessment. A share of stock which is only representative must of necessity reflect in its market value the actual value of the property which is back of it, and which is the only tangible thing that gives value to the stock.

The Iowa Statutes purport to tax the shares of stock in the bank and it cannot be assumed, unless the language used plainly requires it, that the Legislature intended to tax the property generally of the national banks, which it could not do, and not to tax the shares of national banks, which was the only thing it could tax, apart from the real estate of the bank. It must be assumed that the Legislature was familiar with the United States Statutes creating national banks and granting and limiting the power of the states in taxing them. It is more to be assumed because the Legislature of the State has constantly recognized this limitation and its statutes have directed the taxing of national bank shares and not the taxing of the general property of such banks.

Laws of Iowa 1868, Sec. 153.
Code of Iowa 1873, Sec. 818.
Sup. Code of Iowa, 1907, Sec. 1322.
Code Sup. of Iowa, 1913, Sec. 1322.

The method employed by the Iowa Statutes in fixing the value of the shares is the method used in respect to all banks, and as this Court has said, concerning a similar method in the case of *Stanley v. Supervisors of Albany* 121 U. S. 535:

> "The method pursued could in no respect be considered as adopted in hostility to the national banks. It must sometimes place the esti-

mated value of their shares below their real value; but such a result is not one of which the holders of national bank shares can complain. It must sometimes lead also to over-valuation of the shares; but, if so, no ground is thereby furnished for the recovery of the taxes collected thereon."

The Laws of Iowa respecting the taxation of shares of national banks were amended after the decision in *Home Savings Bank v. Des Moines* 205 U. S. 503, and the errors pointed out in that decision were corrected, by repealing the former provision that the value of the shares of state banks were to be assessed to the banks and not to the stockholders, and the provision that state banks were not to be taxed otherwise than on their shares. It also abolished the former rule that only national banks were required to pay the tax for the stockholders and placed the same obligation on the state banks. (*Security Savings Bank v. Board of Review*, 189, Iowa, 463.) There can be but one conclusion, in the light of the history of Iowa Legislation and the decision of the Supreme Court of that state. This conclusion must be that the tax levied upon the shares of bank stock by the Iowa Statutes is in fact a tax upon the share of stock, the property of the shareholder, and not upon the property of the bank. The test of who actually pays the tax should alone be decisive of this question. It is a higher and more significant test than any other that could be applied.

The tax being upon the shares of stock as the property of the individual stockholder and not upon the property of the bank, this case falls squarely within the ruling announced by this court in *Board of Equalization v. Peoples National Bank of King-*

fisher County, 67 L. Ed. 180, affirming the same case as reported in 193 Pac. (Okla.) 622.

II.

The record fails to show that the Plaintiff in Error has either been assessed or that it has paid any taxes upon the Federal Reserve Bank stock owned by it. Hence, the cited case, *Bank of California v. Richardson*, 248 U. S. 476, cannot apply. The mere allegation in general terms that the Defendants in Error assessed stock of the Federal Reserve Bank of Chicago is not sufficient to present the issue in this Court. This division of Plaintiff in Error's Argument is based upon the theory that the stock of the Federal Reserve Bank is itself taxed by the State of Iowa. We believe that it has been fully shown that the tax in question is a tax upon the stock, the property of the stockholder of the bank, and not upon the property of the bank itself. The argument of Plaintiff in Error upon this theory is completely answered by the authorities cited herein, wherein this Court has repeatedly held that a tax upon the shares of stock, the property of the stockholder, is not a tax upon the property of the bank, and that, therefore, tax exempt securities of the United States government are not to be deducted from the property of the bank in computing the value of the stock. The recent case of *Board of Equalization v. People's Bank of Kingfisher County, Oklahoma*, 67 L. Ed. (U. S.) 180, 193 Pac. 623, conclusively settles this contention. This Court therein held that Liberty Bonds, the property of the bank, were not to be deducted in determining the value of the bank stock for the purposes of taxation. This

argument might be extended to greater length, following this theory and repeated decisions of this Court showing the fallacy of the claim made by Plaintiff in Error. We believe, however, that this issue is not before the Court, that the claim made is devoid of all merit and that further argument is therefore unnecessary.

III.

It is next contended that the assessment of the shares of stock of the Plaintiff in Error bank is invalid in that there is a discrimination as against the shares of stock of national banks.

Under the laws of the State of Iowa, Section 1373, Code of 1897, "any person aggrieved by the action of the assessor in assessing his property may make oral or written complaint thereof to the Board of Review * * * and appeals may be taken from the action of the Board with reference to such complaints to the district court." Pursuing the method thus prescribed by the laws of Iowa, the Plaintiff in Error bank for and on behalf of its stockholders appeared before the local Board of Review of the City of Des Moines, Polk County, Iowa, and presented certain objections to the assessment now complained of. These objections are to be found on pages 14, 15, 16, 17 and 18 of the transcript of record.

Construing this statute, the Supreme Court of the State of Iowa has held that the "spirit and purpose of this statute is that the taxpayer coming before this tribunal for relief must state his grievance with sufficient particularity and must specify his complaint with sufficient certainty to enable the tri-

bunal, supposing it to possess ordinary intelligence, to comprehend and understand the matters of which complaint is made, and to grant the particular relief sought for in the complaint. He is not entitled to have any question determined on appeal, except such as he called upon the tribunal to determine in the first place. The appeal reviews the action of the officer or tribunal from which the appeal is taken. The appeal is to determine whether it acted properly in denying relief upon the complaint made. The objections must indicate with reasonable certainty the matters in the assessment to which the complaining party takes exception." *First Nat. Bk. v. City of Council Bluffs*, 182 Iowa 107, 112, 113.

A study of the objections presented to the local Board of Review will disclose the fact that the complaint made to that body was as to the inclusion of certain Liberty Bonds. The only complaint as to discrimination is to be found in Section 10 of the complaint to be found on page 16 of the transcript of record. This objection is in words as follows:

> "That said assessment is erroneous in that it is contrary to the provisions of Section 5219 of the Revised Statutes of the United States because by said assessment the shares of stock of complainant are subjected to a greater assessment and tax than is imposed upon money capital in the hands of individual citizens in said State used and utilized in the same business."

Note that the complaint is as to the tax imposed upon moneyed capital in the hands of individual citizens in said state used and utilized in the same business. This relates back to the preceding sections which have to do with the banking business only.

Note further that in the petition the complaint with regard to this is that as to private bankers certain deductions are allowed for Liberty Bonds. In other words, the only complaint is as to the taxation of private bankers. That this was the interpretation actually given by the Supreme Court of the State of Iowa is apparent from a reading of its decision in *Des Moines National Bank v. Fairweather,* 191 Iowa 1240, 1249. In this regard this case is "on all fours" with the case just cited, *First National Bank v. City of Council Bluffs,* 182 Iowa 107.

At no place either in the objections before the local Board of Review or in the petition is there to be found any allegation that any sum or any amount of moneyed capital in the hands of individual citizens actually in competition with the stock of the bank was assessed upon a lower basis than bank stock. Certainly no allegation that the assessing body had assessed moneyed capital, relatively material in amount actually in competition with the stock of national banks, upon a lower basis than that applied to national bank stock. This being true, there is no question before this court as to any claim of discrimination in favor of moneyed capital as was before the court in the recent case of *Merchants National Bank v. Richmond,* 256 U. S. 635; *Des Moines National Bank v. Fairweather,* 191 Iowa 1240, 1249; *First National Bank v. City of Council Bluffs,* 182 Iowa 107; *Herbig v. Auto Co.,* 186 Iowa 923; *National Bank v. City Council,* 136 Iowa 203; *Mutual Life Ins. Co. v. McGrue,* 188 U. S. 291.

In this connection, however, it may be well to point out that under the laws of the State of Iowa

there is and there can be no discrimination as against the shares of national bank stock and in favor of moneyed capital. Section 1310 of the Supplement to the Code (Iowa 1913) provides that:

> "All moneyed capital within the meaning of section fifty-two hundred nineteen of the revised statutes of the United States shall be listed and assessed against the owner thereof at his place of business, and if a corporation at its principal place of business, at the same rate as state, savings, national bank and loan and trust company stock is taxed, in the same taxing district, and at the actual value of the moneyed capital so invested."

Section 1322-1a of the Supplement to the Code of Iowa 1913 provides as follows:

> "For the purpose of placing the taxation of bank and loan and trust company stock and moneyed capital as nearly as possible upon a taxable value relatively equal to the taxable value at which other property is now actually assessed throughout the state as compared with the actual value thereof, it is hereby provided that state, savings and national bank stock and loan and trust company stock and moneyed capital shall be assessed and taxed upon the taxable value of twenty per cent of the actual value thereof, determined as herein provided, which twenty per cent of the actual value shall be taken and considered as the taxable value and shall be taxed as other property in such taxing district."

It will be observed from these two sections that the Legislature of Iowa has provided that moneyed capital in competition with bank capital shall be listed, assessed and taxed in the identical manner and at the same rate used for listing and taxing of

bank stock. We fail to see therefore where there can be any claim as to discrimination under the Iowa laws as against national bank stock and in favor of moneyed capital.

To the same effect it will be observed that under section 1321 of the Supplement to the Code 1913, coupled with sections 1310 and 1322-1a of the Supplement to the Code 1913, that the property of private bankers is likewise assessed. The Supreme Court of Iowa has repeatedly pointed out the fact that under the Statutes of Iowa there can be no discrimination as against the stock of national banks. See *Head v. Board of Review,* 170 Iowa 300; *Des Moines National Bank v. Fairweather,* 191 Iowa 1240, 1249. Again the fact that individuals, such as private bankers, may deduct from the amount of their assessable property the amount of tax exempt securities held by them is not a discrimination forbidden by Section 5219 of the Revised Statutes of the United States as against the owner of national bank stock assessed at its value. Section 5219, Revised Statutes of the United States, in requiring other money capital to be assessed at an equal rate only refers to such money capital *as the state has the power to tax* and not to the property which the national power has exempted from taxation. As this court said in *People v. The Commissioners,* 4 Wall. 244, 256:

> "The answer is, that upon a true construction this clause of the act the meaning and intent of the law-makers were, that the rate of taxation of the shares should be the same, or not greater, than upon the moneyed capital of the individual citizens which is subject or liable to taxation. That is, no greater proportion or

percentage of tax in the valuation of the shares would be levied than upon other moneyed taxable capital in the hands of the citizens.

* * * * * * * *

"The objection is a singular one. At the time Congress enacted this rule as a limitation against discrimination it was well known to the body that these securities in the hands of a citizen were exempt from taxation. It has been so held by this court, and, for abundant caution, had passed into a law."

As the Supreme Court of Iowa has also said in *Head v. Board of Review*, 170 Iowa 300, 314:

"It is clear enough under these decisions that deducting United States bonds from the property of the private bank in assessing its property involved no discrimination against shareholders of national banks. All the shareholder can demand is that his share be taxed at the same rate as the property of the private banker. The bonds are non-taxable, and reference certainly could not have been to these in exacting equality. The discrimination is prohibited as to property which may be taxed, and there is none under the state statutes between that on the shares and property of the private banker which may be taxed."

Congress has not prescribed the method to be pursued in valuing national bank stock, it has left that to be done by the states, each using its own peculiar method. It has put two restrictions upon the states in arriving at this value, first, the taxation must not be at a greater rate than upon other moneyed capital in the hands of individual citizens of such states (a material portion thereof coming into competition with national banks). Second, the stock must be taxed in the district where the bank is located.

It is permissible to provide different methods for valuing different classes of property. (*Laymen v. Telephone Co.*, 123 Iowa 391; *Stanley v. Board of Supervisors*, 121 U. S. 535.) If, therefore, the value placed upon a share of stock is the minimum value measured by the tangible assets of the bank over and above its liabilities as shown by the statement, that stock cannot in the nature of things be over-valued. It is over-valuation, the necessary concomitant of over-assessment, that is prohibited by Section 5219 and not under-valuation. The tangible assets (capital, surplus and undivided earnings) by which the value of the stock is measured are not subject to further appraisement because they are in fact dollars and have a value of one hundred cents, no more or no less. However, so careful was the state of Iowa not to discriminate against the banks that it enacted Section 1322-1a, Supplement Code of Iowa, 1913, which provides that the value of bank stock, as fixed in compliance with the statutes governing the same, shall be taxed on only 20 per cent thereof, while all other property, by Section 1305, Supplement Code of Iowa, 1913, is valued at its actual value and taxed at 25 per cent thereof.

It must be assumed that the provisions of Section 1305, Supplement to the Code, 1913, are followed and obeyed by the taxing officials, and that all other property is thus valued. (*Cummings v. Mer. Nat. Bank*, 101 U. S. 153.)

It may be contended that under the pleadings in this case the issue of discrimination is tendered under the demurrer. In this connection attention is called to the fact that this very proposition is de-

termined adversely to Plaintiff in Error by the Supreme Court of the State of Iowa. *Des Moines National Bank v. Fairweather,* 191 Iowa 1240, 1249; *In Re: Assessment of Farmers & Merchants Savings Bank,* 195 Iowa 394. The highest court of the state holds that an allegation in a petition that moneyed capital is loaned and invested in a taxing district and the tax levied thereon is materially less than the tax levied in said district on shares of stock in national banks tenders no issue of discrimination under Section 5219 of the Revised Statutes of the United States. There must be allegations of ultimate fact from which it can be determined, not only that said moneyed capital is in competition with the ordinary and normal business of national banks, but that the amount of said moneyed capital is relatively material. See cases cited. It is fundamental that this court will follow the state court on question of practice. It follows that no issue has been tendered as to any discrimination in favor of moneyed capital as contended for by Plaintiff in Error.

While we deem it unnecessary to a determination of this case, to submit to the court any argument relative to the true interpretation to be given the decisions of this court relative to the definition of moneyed capital, may we submit a few observations thereon? The National Congress in its enactment of the statute relating to the assessment of national bank stock by the states had a definite, certain purpose in view. That purpose was to prevent the fostering by the states of local institutions to the serious injury of national banks.

As stated by this court in *Jenkins v. Neff,* 186

U. S. 230, 46 L. Ed. 1140:

> "The main purpose, therefore, of Congress in fixing limits to state taxation on investments in the shares of national banks, was to render it impossible for the state, in levying such a tax, to create and foster an unequal and unfriendly competition by favoring institutions or individuals carrying on a similar business and operations and investments of a like character. The language of the act of Congress is to be read in the light of this policy."

The court further says:

> "It is essential, if the law of the state is to be declared invalid under the limitations expressed in the United States statute, that the enactment of the Legislature shall evidence a disposition to evade or override the spirit of the limiting statute; and this is clearly not the case where it provides for equal taxation upon its own state banks, and where it does not require its trust companies, which, it may be conceded, come into a limited competition with the investors in the shares of national banks, to invest their capital in such a way as to necessarily exempt them from taxation upon a portion of their capital stock. If the state refused to allow its trust companies to invest in United States securities there might be a far greater cause for grievance. Trust companies are not organized primarily for banking purposes; they are designed for other purposes, as pointed out in the Mercantile Bank Case, and it was never the purpose of the federal government to interfere with the policy of the state in reference to the formation and development of such corporations as it should judge expedient, even though it should be found necessary to invest them with some of the powers of banking associations as an inducement to perform the other duties and obligations imposed by the state. As was said

> in the Mercantile Bank Case in reference to savings banks, 'However large, therefore, may be the amount of moneyed capital in the hands of individuals, in the shape of deposits in savings banks as now organized, which the policy of the state exempts from taxation for its own purposes, that exemption cannot affect the rule for the taxation of shares in national banks, provided they are taxed at a rate not greater than other moneyed capital in the hands of individual citizens otherwise subject to taxation.' "

It certainly could not have been the purpose of the National Congress to prohibit the states from enacting special tax legislation, classifying ordinary moneys and credits. Ordinary moneys and credits include practically the whole field of commercial paper and active business in this nation. And if the question of competition be extended to its ultimate limits there can be no moneys and credits within the real meaning of the word, except as in some limited way it is in competition with national bank stock. If it were to be held that however limited the competition might be, either in character or in amount, the provisions of Section 5219 of the Revised Statutes apply, then the entire tax structure relating to the taxation of moneys and credits in all the states of the nation will be held invalid. This will not only result in chaos and ultimate injury to the business welfare of the nation, but will substantially overrule all of the decisions of this court as heretofore handed down bearing upon the same question.

The recent decision of this court in *Merchants National Bank v. City of Richmond,* 256 U. S. 635,

65 L. Ed. 1135, must be considered in the light of the previous decisions of this court. See *Mercantile National Bank of N. Y. v. New York,* 121 U. S. 138, 30 L. Ed. 895; *First National Bank of Aberdeen v. Chehalis County,* 166 U. S. 440, 41 L. Ed. 1069; *San Francisco National Bank v. Dodge,* 197 U. S. 70, 49 L. Ed. 669; *First National Bank of Garnett v. Ayers,* 160 U. S. 660; *Merchants National Bank v. Pennsylvania,* 167 U. S. 461; *Jenkins v. Neff,* 186 U. S. 230, 46 L. Ed. 1140; *New York v. Purdy,* 231 U. S. 373, 58 L. Ed. 274; *Talbot v. Commissioners,* 139 U. S. 438, 35 L. Ed. 210; *Palmer v. McMahon,* 133 U. S. 660, 33 L. Ed. 772.

From a consideration of this decision in the light of the previous decisions of this court it is apparent that the "moneyed capital" referred to in Section 5219 of the Revised Statutes of the United States is only that "moneyed capital" which is employed in substantial competition with the stock of national banks as well as substantial in amount. In other words, the true intent, either of the statutes or of the taxing authorities to discriminate against national bank stock and to foster state institutions and interests must be clearly shown or else this court will not assume jurisdiction.

CONCLUSION

Without extending this argument further, we submit, first, that the taxing laws of the State of Iowa providing as they do that the property of the stockholder shall be taxed and not the property of the corporation, the assessment is not invalid because of the inclusion of tax exempt securities of the United States; second, that for the same reasons the

second contention of Plaintiff in Error that the assessment is illegal because it is in part based upon the value of capital stock of the Federal Reserve Bank of Chicago owned by Plaintiff in Error, must fail; third, that there is under the laws of the State of Iowa relating to the taxation of bank stock, both state and national, including the stock of loan and trust companies, no discrimination as against said stock and in favor of the property of private bankers or moneyed capital as defined by Section 5219 of the Revised Statutes of the United States.

Attention is respectfully called to the briefs of learned counsel for the city of Des Moines in the Supreme Court of Iowa as set out in the transcript. In such briefs the questions involved are fully discussed.

We respectfully submit that the Writ of Error should be dismissed and the judgment of the Supreme Court of Iowa affirmed.

Respectfully submitted,

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Counsel for Defendant in Error.

Syllabus.

DES MOINES NATIONAL BANK *v.* FAIRWEATHER, MAYOR; ET AL.

ERROR TO THE SUPREME COURT OF THE STATE OF IOWA.

No. 17. Argued October 3, 1923.—Decided November 12, 1923.

1. National banks, their property, or the shares of their capital stock, cannot be taxed by the States otherwise than in conformity with the terms and restrictions imposed by Congress in assenting to such taxation. P. 106.
2. Under § 5219, Rev. Stats., (prior to the amendment of March 4, 1923,) national banks and their property were free from state taxation, except on their real property and on shares held by them in other national banks; and all shares in such banks were taxable to their owners, the stockholders, subject to the restrictions that they be not taxed higher than other moneyed capital, employed in competition with such banks, and that the taxing of shares of nonresidents of the State be at the place of the bank's location. P. 107.
3. Where under the state law the shares in a national bank are assessed to the shareholders, and the property of the bank, other than real estate, is expressly exempt, valuation of the shares by the capital, surplus, and undivided earnings, less the real estate, and requiring the bank, primarily, to pay the tax on the shares on behalf of the shareholders, (while allowing it ample means of reimbursement through a lien on the shares,) do not make the tax on the shares in effect a tax on the bank's property, in violation of § 5219, *supra*. P. 111.
4. In assessing shares in a national bank for taxation to the shareholders, no deduction need be made on account of securities of the United States, exempt from state taxation, which are part of the assets of the bank by which the value of the shares is measured, since the shares are property of the shareholders, distinct from the corporate assets. P. 112. *Bank of California* v. *Richardson*, 248 U. S. 476, distinguished.
5. The restriction that taxation of national bank shares "shall not be at a greater rate than is assessed upon other moneyed capital in the hands of individual citizens" of the State, (Rev. Stats., § 5219,) is to prevent discrimination against national banks in favor of state institutions or individuals engaged in similar business or

investments, and applies to rules of valuation as well as to tax percentages. P. 116.

6. This restriction, however, is not violated when the State, perforce, deducts tax-exempt securities of the United States in assessing capital employed in private banking, while taxing (as the act of Congress allows) the value of the shares of national banks without allowance for such tax-exempt securities owned by such banks. *Id.*

191 Iowa, 1240, affirmed.

ERROR to a judgment of the Supreme Court of Iowa sustaining an assessment upon shares of the plaintiff in error Bank, in proceedings by way of appeal from the action of a board of equalization.

Mr. J. G. Gamble, with whom *Mr. R. L. Read* was on the brief, for plaintiff in error.

Mr. Ben J. Gibson, Attorney General of the State of Iowa, and *Mr. John J. Halloran*, with whom *Mr. Maxwell A. O'Brien* and *Mr. George F. Henry* were on the brief, for defendants in error.

MR. JUSTICE VAN DEVANTER delivered the opinion of the Court.

This was a proceeding begun by a national bank in Iowa to secure a reduction in an assessment of the shares of its capital stock for taxing purposes, made in 1919.

The proceeding was in the nature of an appeal from the action of a board of equalization, and ultimately reached the Supreme Court of the State. The bank objected that the board had proceeded on a mistaken construction of the state statute respecting such assessments and that the statute, as construed and applied by the board, was invalid in that it was in conflict with the state constitution and with laws of the United States. The objections were overruled and the assessment upheld. 191 Iowa, 1240. The bank then sued out this writ of error.

The facts may be shortly stated. No assessment was made against the bank, save of its real property. The shares of its capital stock were assessed to their several owners, the stockholders. The aggregate of the bank's capital, surplus and undivided earnings, was taken as the value of the shares, and from this the amount actually invested in real property was deducted. A proportionate part of the remaining sum was attributed to each share. Among the bank's assets were various securities of the United States, concededly exempted from state taxation by laws of the United States. There was also some stock in a federal reserve bank, claimed to be likewise exempted. The bank sought to have these securities and this stock excluded in making the assessment; that is, to have their value deducted from the total of the capital, surplus and undivided earnings. The board declined to make the deduction, and pursued a like course in assessing shares in corporate state banks. Among the bank's competitors were some banks conducted by individuals,—private banking being admissible in that State. In assessing the moneyed capital employed by these private bankers in their banking business, the board excluded so much thereof as was invested in non-taxable securities of the United States. Twenty per cent. of each of the assessments here described, whether of bank shares or money employed in private banking, was set down or listed as the taxable value, as distinguished from the real value. The tax levy was to be at a uniform rate on such taxable value.

We are asked to go into the proper construction of the state statute and its validity under the state constitution. But these are questions of local law, the decision of which by the Supreme Court of the State is controlling. *First National Bank of Garnett* v. *Ayers*, 160 U. S. 660, 664; *Merchants' and Manufacturers' National Bank* v. *Pennsylvania*, 167 U. S. 461; *Lindsley* v. *Natural Car-*

bonic Gas Co., 220 U. S. 61, 73; *Price* v. *Illinois*, 238 U. S. 446, 451.

The only contentions made by the bank which we can consider are, first, that the state statute in substance commands an assessment of the property of the bank, rather than the shares of the stockholders, contrary to the terms of § 5219 of the Revised Statutes of the United States; secondly, that the statute, even if commanding an assessment of the shares of the stockholders, subjects securities of the United States and stock in a federal reserve bank to state taxation in disregard of exemptions arising out of laws of the United States, and, thirdly, that, if the assessment be of the shares, the statute subjects them to a higher rate of taxation than is laid on other moneyed capital of individual citizens,—meaning the private bankers,—and thereby violates a restriction imposed by § 5219 of the Revised Statutes of the United States.

It is settled that the relation of the national banks to the United States and the purposes intended to be subserved by their creation are such that there can be no taxation, by or under state authority, of the banks, their property or the shares of their capital stock otherwise than in conformity with the terms and restrictions embodied in the assent given by Congress to such taxation. *People* v. *Weaver*, 100 U. S. 539, 543; *Rosenblatt* v. *Johnston*, 104 U. S. 462; *Mercantile National Bank* v. *New York*, 121 U. S. 138, 154; *Talbott* v. *Silver Bow County*, 139 U. S. 438, 440; *Owensboro National Bank* v. *Owensboro*, 173 U. S. 664, 669; *First National Bank of Gulfport* v. *Adams*, 258 U. S. 362.

The congressional assent and the terms and restrictions accompanying it as existing at the time of this assessment are found in Rev. Stats., § 5219, which reads as follows[1]:

[1] Several important changes in § 5219 were made by an amendatory Act of March 4, 1923, c. 267, 42 Stat. 1499, but they have no bearing on this case.

"Nothing herein shall prevent all the shares in any association from being included in the valuation of the personal property of the owner or holder of such shares, in assessing taxes imposed by authority of the State within which the association is located; but the legislature of each State may determine and direct the manner and place of taxing all the shares of national banking associations located within the State, subject only to the two restrictions, that the taxation shall not be at a greater rate than is assessed upon other moneyed capital in the hands of individual citizens of such State, and that the shares of any national banking association owned by non-residents of any State shall be taxed in the city or town where the bank is located, and not elsewhere. Nothing herein shall be construed to exempt the real property of associations from either State, county, or municipal taxes, to the same extent, according to its value, as other real property is taxed."

This section shows, and the decisions under it hold, that what Congress intended was that national banks and their property should be free from taxation under state authority, other than taxes on their real property and on shares held by them in other national banks; and that all shares in such banks should be taxable to their owners, the stockholders, much as other personal property is taxable, but subject to the restriction that the shares be not taxed higher than other taxable moneyed capital employed in competition with such banks, and to the further restriction that the taxing of the shares of non-residents of the State be at the place where the bank is located. *People* v. *Commissioners*, 4 Wall. 244; *Bank of Redemption* v. *Boston*, 125 U. S. 60, 69; *Mercantile National Bank* v. *New York, supra; Owensboro National Bank* v. *Owensboro, supra; Bank of California* v. *Richardson*, 248 U. S. 476; *First National Bank of Gulfport* v. *Adams, supra.*

With this understanding of the terms and restrictions of the congressional assent we proceed to an examination

of the state statute and the particulars in which it is said to be in conflict with them and with tax-exempting laws of the United States. The main provisions of the statute are found in §§ 1310, 1322, 1322–1a and 1325 of the Code of Iowa,[2] which read as follows:

"Sec. 1310. . . . All moneyed capital within the meaning of section fifty-two hundred nineteen of the revised statutes of the United States shall be listed and assessed against the owner thereof at his place of business, and if a corporation at its principal place of business, at the same rate as state, savings, national bank and loan and trust company stock is taxed, in the same taxing district, and at the actual value of the moneyed capital so invested. The person or corporation using moneyed capital in competition with bank capital shall furnish the assessor upon demand a full and complete itemized sworn statement showing the amount of moneyed capital so used."

"Sec. 1322. Shares of stock of national banks and state and savings banks, and loan and trust companies, located in this state, shall be assessed to the individual stockholders at the place where the bank or loan and trust company is located. At the time the assessment is made the officers of national banks and state and savings banks and loan and trust companies shall furnish the assessor with lists of all the stockholders and the number of shares owned by each and the assessor shall list to each stockholder under the head of corporation stock the total value of such shares. To aid the assessor in fixing the value of such shares the said corporation shall furnish him a verified statement of all the matter provided in section thirteen hundred twenty-one of the supplement to the code 1907, which shall also show separately the amount of

[2] The reference is to the Code as amended April 6, 1911, Laws 34th General Assembly, p. 45,—the amendments being shown in the code supplement of 1913.

the capital stock and the surplus and undivided earnings, and the assessor from such statement shall fix the value of such stock based upon the capital, surplus, and undivided earnings. In arriving at the total value of the shares of stock of such corporations, the amount of their capital actually invested in real estate owned by them and in the shares of stock of corporations owning only the real estate (inclusive of leasehold interest, if any,) on or in which the bank or trust company is located, shall be deducted from the real value of such shares, and such real estate shall be assessed as other real estate, and the property of such corporation shall not be otherwise assessed. A refusal to furnish the assessor with the list of stockholders and the information required under this section shall be deemed a misdemeanor and any bank or officer thereof so refusing shall be punished by a fine not exceeding five hundred dollars."

"Sec. 1322–1a. For the purpose of placing the taxation of bank and loan and trust company stock and moneyed capital as nearly as possible upon a taxable value relatively equal to the taxable value at which other property is now actually assessed throughout the state as compared with the actual value thereof, it is hereby provided that state, savings and national bank stock and loan and trust company stock and moneyed capital shall be assessed and taxed upon the taxable value of twenty per cent. of the actual value thereof, determined as herein provided, which twenty per cent. of the actual value shall be taken and considered as the taxable value and shall be taxed as other property in such taxing district."

"Sec. 1325. The corporations described in the preceding sections shall be liable for the payment of the taxes assessed to the stockholders of such corporations, and such tax shall be payable by the corporation in the same manner and under the same penalties as in case of taxes

due from an individual taxpayer, and may be collected in the same manner as other taxes, or by action in the name of the county. Such corporations may recover from each stockholder his proportion of the taxes so paid, and shall have a lien on his stock and unpaid dividends therefor. If the unpaid dividends are not sufficient to pay such tax, the corporation may enforce such lien on the stock by public sale of the same, to be made by the sheriff at the principal office of such corporation in this state, after giving the stockholders thirty days' notice of the amount of such tax and the time and place of sale, such notices to be by registered letter addressed to the stockholder at his post-office address, as the same appears upon the books of the company, or is known by its secretary."

Section 1321 referred to in § 1322 relates to the assessment of capital employed in private banking. For present purposes it may be described as requiring the banker to submit to the assessor a sworn statement of the assets and liabilities of his bank with a particular description of such of the assets as are exempt from taxation, and as directing an assessment based on the aggregate value of moneys and credits less deposits, of bonds and stocks less such as are otherwise taxed in the State and of the other property pertaining to the business, but omitting the real estate, which is to be specially assessed as other real estate. The section does not purport to create any exemption or to do more in that regard than possibly to imply that exemptions otherwise created are to be respected. In practice the assessing officers when assessing the capital of private banks do deduct so much thereof as is invested in tax-exempt securities of the United States, but they do this because they regard it as necessary under the tax-exempting laws of the United States.

As construed by the Supreme Court of the State, the statute as a whole contemplates, and § 1322 requires, that

the shares be assessed to the stockholders as their property; and as illustrating that the statute makes a clear distinction between the shares and the property of the bank, the court points to the provision which requires that the real estate be assessed against the bank and to the succeeding provision which declares that "the property of such corporation shall not be otherwise assessed." This, without more, seems completely to refute the contention that what the statute really directs is an assessment of the bank's property instead of the stockholders' shares. The only argument advanced in support of the contention is drawn from the fact that the capital, surplus and undivided earnings of the bank are made the measure of the value of the shares (see *First National Bank of Remsen* v. *Hayes*, 186 Iowa, 892, 900), and from the fact that the bank is required primarily to pay the tax on the shares. In our opinion neither fact gives color to the contention.

The value of the shares must depend chiefly on the capital, surplus and undivided earnings of the bank. These are the substantial elements and are susceptible of ready ascertainment. Other possible elements are of relatively small weight and difficult of estimation. That controlling consideration is given to the former and none to the latter may result in an under-valuation, but it does not make the assessment any the less an assessment of the shares. Besides, it hardly lies with the stockholders or the bank to object that the assessment is too low. *Stanley* v. *Supervisors of Albany*, 121 U. S. 535, 549.

While the bank is required primarily to pay the tax on the shares, the statute (§ 1325) shows that the payment is to be on behalf of the stockholders and that the bank is accorded ample means of enforcing reimbursement from them. It is on the stockholders that the burden ultimately rests. This mode of collecting through the bank the tax against the stockholders has been widely

adopted and this court has pronounced it not inconsistent with the terms of the congressional assent. *National Bank* v. *Commonwealth*, 9 Wall. 353, 361; *Aberdeen Bank* v. *Chehalis County*, 166 U. S. 440, 444; *Covington* v. *First National Bank*, 198 U. S. 100, 111–112; *First National Bank of Gulfport* v. *Adams*, *supra*.

The next contention—that the statute subjects securities of the United States to taxation contrary to exempting laws of the United States in that it requires that the assessment be based on the aggregate of the capital, surplus and undivided earnings without any deduction or allowance on account of the investment in such securities—confuses the shares, which are the property of the stockholders, with the corporate assets, which are the property of the bank. It is quite true that the States may not tax such securities, but equally true that they may tax the shares in a corporation to their owners, the stockholders, although the corporate assets consist largely of such securities, and that in assessing the shares it is not necessary to deduct what is invested in the securities. The difference turns on the distinction between the corporate assets and the shares,—the one belonging to the corporation as an artificial entity and the other to the stockholders. As respects national banks, the rule is the same as with corporations in general. The subject was extensively considered by this court in *Van Allen* v. *The Assessors*, 3 Wall. 573, which involved the power of a State to tax stockholders in national banks on their shares without making any deduction on account of tax-exempt bonds of the United States in which the capital of the banks was chiefly invested. In sustaining the power, the court said, p. 583:

"The tax on the shares is not a tax on the capital of the bank. The corporation is the legal owner of all the property of the bank, real and personal; and within the powers conferred upon it by the charter, and for the pur-

poses for which it was created, can deal with the corporate property as absolutely as a private individual can deal with his own. . . . The individual members of the corporation are no doubt interested in one sense in the property of the corporation, as they may derive individual benefits from its increase, or loss from its decrease; but in no legal sense are the individual members the owners.

"The interest of the shareholder entitles him to participate in the net profits earned by the bank in the employment of its capital, during the existence of its charter, in proportion to the number of his shares; and, upon its dissolution or termination, to his proportion of the property that may remain of the corporation after the payment of its debts. This is a distinct independent interest or property, held by the shareholder like any other property that may belong to him. Now, it is this interest which the act of Congress has left subject to taxation by the States, under the limitations prescribed, as will be seen on referring to it."

Then, after noticing the use made of the term "shares" in other parts of the act, the court added, p. 588:

"In all these instances, it is manifest that the term as used means the entire interest of the shareholder; and it would be singular, if in the use of the term in the connection of State taxation, Congress intended a totally different meaning, without any indication of such intent.

"This is an answer to the argument that the *term*, as used here, means only the interest of the shareholder as representing the portion of the capital, if any, not invested in the bonds of the government, and that the State assessors must institute an inquiry into the investment of the capital of the bank, and ascertain what portion is invested in these bonds, and make a discrimination in the assessment of the shares. If Congress had intended any such discrimination, it would have been an easy matter to

have said so. Certainly, so grave and important a change in the use of this term, if so intended, would not have been left to judicial construction.

"Upon the whole, after the maturest consideration which we have been able to give to this case, we are satisfied that the States possess the power to tax the whole of the interest of the shareholder in the shares held by him in these associations, within the limit prescribed by the act authorizing their organization."

That ruling often has been reaffirmed, but never qualified, and is now settled law in this court. *People* v. *Commissioners*, 4 Wall. 244; *National Bank* v. *Commonwealth*, *supra*, p. 359; *Palmer* v. *McMahon*, 133 U. S. 660, 666; *Bank of Commerce* v. *Tennessee*, 161 U. S. 134, 146; *New Orleans* v. *Citizens' Bank*, 167 U. S. 371, 402; *Owensboro National Bank* v. *Owensboro*, *supra*, p. 681; *Home Savings Bank* v. *Des Moines*, 205 U. S. 503, 518. The latest application of the ruling was at the last term in *People's National Bank of Kingfisher* v. *Board of Equalization*, 260 U. S. 702, where a decision of the Supreme Court of Oklahoma, 79 Okla. 312, which had followed *Van Allen* v. *The Assessors*, was affirmed "upon the authority of" that case and *National Bank* v. *Commonwealth*.

Counsel for the bank regard the case of *Bank of California* v. *Richardson*, 248 U. S. 476, as qualifying *Van Allen* v. *The Assessors* and other cases which reaffirmed and applied its ruling. But the case is not fairly open to that interpretation. Some expressions are found in the opinion which, if taken literally and alone, seem to treat the stockholders and the bank as one for taxing purposes; but the opinion as a whole and the ultimate decision demonstrate that these expressions fairly cannot be taken in that way and that there was no purpose to qualify the ruling so often announced and applied in earlier cases. That case was exceptional in its facts. A national bank owning shares in two other banks, one national and the

other state (see § 5154, Rev. Stats.), was taxed on those shares. Its stockholders were also taxed on their shares in it,—their shares being taxed on a valuation which took into account all the assets of the bank, other than real estate, including its shares in the other banks. The bank objected to being taxed on its shares in the state bank and also to its stockholders being taxed on a valuation of their shares based in part on its shares in the other banks,—the ground of each objection being that the tax was not in accord with the terms and spirit of the congressional assent. The decision shortly stated was as follows: 1. The bank was wrongly taxed on its shares in the state bank; but those shares were rightly taken into account in valuing the shares of the stockholders. 2. The bank was rightly taxed on its shares in the other national bank, for the reasons given in *Bank of Redemption* v. *Boston*, 125 U. S. 60, 69–70. 3. The shares in the other national bank were wrongly taken into account in valuing the shares of the stockholders, because the provision under which they were taxed to the bank was intended to be exclusive and to prevent the values in the shares from being made, directly or indirectly, a basis for any other or further taxation. On the first and second points, the members of the court were all in accord, but on the third there was a strong dissent,—the matter in difference being whether the State, consistently with the terms and spirit of the congressional assent, could tax the shares in the hands of the bank which owned them, and also subject the values in them to another tax laid on the bank's stockholders. The difference was resolved against the further taxation because of what was deemed an implicit restriction in the congressional assent. There had been no prior decision on that point, and it is not involved in the case now under consideration.

What has been said respecting the tax-exempt securities among the bank's assets disposes of the contention

relating to its stock in a federal reserve bank. If, as is insisted, the stock was exempt, it was to be treated and considered in the same way that the securities were. And whether exempt or not, there was no authority for taxing it to the bank, but only for taking it into account in valuing the shares of the stockholders.

The contention that the state statute subjects shares in a national bank to a higher rate of taxation than is laid on other moneyed capital in the hands of individual citizens is rested on the fact that in assessing capital employed in private banking the part invested in tax-exempt securities of the United States is deducted, while in assessing national bank shares the bank's investment in such securities is not deducted.

The provision found in the congressional assent, that the taxation of the shares "shall not be at a greater rate than is assessed upon other moneyed capital in the hands of individual citizens of such State," has been considered by this court so many times that its purpose and meaning have come to be pretty well understood. Its main purpose is to render it impossible for the State, in levying such a tax, to create and foster an unequal and unfriendly competition, by favoring institutions or individuals carrying on a business similar to that of national banks or engaging in operations and investments of a like character; and the restriction comprehends a discrimination effected through rules for fixing valuations quite as much as one effected by using different percentages in computing taxes on fixed valuations. *People* v. *Weaver*, 100 U. S. 539, 545; *Mercantile National Bank* v. *New York*, 121 U. S. 138, 155; *Amoskeag Savings Bank* v. *Purdy*, 231 U. S. 373, 385.

Our concern here is not with a voluntary refusal or intentional omission on the part of the State to tax other moneyed capital of citizens as it taxes national bank shares, but with a submission by the State to superior

laws of the United States exempting a part of the other moneyed capital from state taxation. It may be helpful to state the matter in another way. National bank shares are taxable,—made so by the congressional assent. That much or little of the bank's assets consists of tax-exempt securities of the United States does not affect the taxability of the shares,—they being distinct from the corporate assets. The State taxes such shares without regard to the exempt government securities held by the bank. The capital of private bankers is taxable, save the part invested in exempt government securities. The State taxes all of that capital, save the exempt securities. They are exempt because the United States makes them so, and the State merely respects the exemption. In what is thus done does the State discriminate against national bank shares and in favor of other moneyed capital in the sense of the restriction? The question is not new; nor can it be regarded as an open one in this court.

In *People* v. *Commissioners*, 4 Wall. 244, the question was whether, in the presence of the restriction, a State could assess and tax to their owners shares in national banks without making any deduction on account of tax-exempt securities of the United States held by the banks, when in taxing moneyed capital of individuals employed in competition with those banks such a deduction was made. The court gave an affirmative answer to the question, saying, p. 256:

"The answer is, that upon a true construction of this clause of the act, the meaning and intent of the lawmakers were, that the rate of taxation of the shares should be the same, or not greater, than upon the moneyed capital of the individual citizen which is subject or liable to taxation. That is, no greater proportion or percentage of tax in the valuation of the shares should be levied than upon other moneyed taxable capital in the hands of the citizens.

"This rule seems to be as effectual a test to prevent unjust discrimination against the shareholders as could well be devised. It embraces a class which constitutes the body politic of the State, who make its laws and provide for its taxes. They can not be greater than the citizens impose upon themselves. It is known as sound policy that, in every well-regulated and enlightened state or government, certain descriptions of property, and also certain institutions—such as churches, hospitals, academies, cemeteries, and the like—are exempt from taxation; but these exemptions have never been regarded as disturbing the rates of taxation, even where the fundamental law had ordained that it should be uniform.

"The objection is a singular one. At the time Congress enacted this rule as a limitation against discrimination, it was well known to that body that these securities in the hands of the citizen were exempt from taxation. It had been so held by this court, and, for abundant caution, had passed into a law.

"The argument founded on the objection, if it proves anything, proves that these securities should have been taxed in the hands of individuals to equalize the taxation; and, hence, that Congress by this clause in the proviso intended to subject them, as thus situated, to taxation; and, therefore, there was error in the deduction. This we do not suppose is claimed. But if this is not the result of the argument, then, the other conclusion from it is, that Congress required that the commissioners should deduct the securities, and at the same time intended the deduction, if made, should operate as a violation of the rate of the tax prescribed. We dissent from both conclusions."

That view of the matter has been adopted and given effect in all subsequent cases presenting the question. *Lionberger* v. *Rouse*, 9 Wall. 468, 475; *Hepburn* v. *School Directors*, 23 Wall. 480, 485; *Adams* v. *Nashville*, 95 U. S.

19, 22; *Mercantile National Bank* v. *New York*, 121 U. S. 138, 149, 161. Counsel for the bank regard *Van Allen* v. *The Assessors, supra*, p. 581, as making for the other view. But that it does not do so is plainly pointed out in *Mercantile National Bank* v. *New York, supra*, p. 152. We perceive no reason for disturbing prior decisions on the point.

Our conclusion is that none of the objections urged against the state statute is well taken.

Judgment affirmed.

ST. JOHNS N. F. SHIPPING CORPORATION, OWNER, &c. *v.* S. A. COMPANHIA GERAL COMMERCIAL DO RIO DE JANEIRO.

CERTIORARI TO THE CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT.

No. 43. Argued October 4, 1923.—Decided November 12, 1923.

1. A preliminary freight reservation agreement for carriage of goods "on or under deck, ship's option," and subject "to terms of bills of lading in use by steamer's agents," gives the ship an option as to place of stowage; and, in the absence of a general port custom to the contrary, the issuance thereafter of a clean bill of lading amounts to a positive representation by the ship that the option has been exercised and that the goods will go under deck. P. 123.
2. Where rosin shipped under a clean bill of lading was stowed on deck, and was jettisoned during the voyage to relieve the ship in a storm, *held*, that the ship was liable as for a deviation, could not escape by reason of relieving clauses in the bill, and must pay damages measured by the value of the goods at destination. P. 124.

280 Fed. 553, affirmed.

CERTIORARI to a decree of the Circuit Court of Appeals which affirmed a decree of the District Court, in admiralty, awarding damages against a ship for loss of cargo.

Mr. Clarence Bishop Smith, with whom *Mr. Henry M. Hewitt* was on the brief, for petitioner.

"This rule seems to be as effectual a test to prevent unjust discrimination against the shareholders as could well be devised. It embraces a class which constitutes the body politic of the State, who make its laws and provide for its taxes. They can not be greater than the citizens impose upon themselves. It is known as sound policy that, in every well-regulated and enlightened state or government, certain descriptions of property, and also certain institutions—such as churches, hospitals, academies, cemeteries, and the like—are exempt from taxation; but these exemptions have never been regarded as disturbing the rates of taxation, even where the fundamental law had ordained that it should be uniform.

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"The argument founded on the objection, if it proves anything, proves that these securities should have been taxed in the hands of individuals to equalize the taxation; and, hence, that Congress by this clause in the proviso intended to subject them, as thus situated, to taxation; and, therefore, there was error in the deduction. This we do not suppose is claimed. But if this is not the result of the argument, then, the other conclusion from it is, that Congress required that the commissioners should deduct the securities, and at the same time intended the deduction, if made, should operate as a violation of the rate of the tax prescribed. We dissent from both conclusions."

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Judgment affirmed.